Note: *The draft you are looking for begins on the next page.*

Caution: *DRAFT—NOT FOR FILING*

This is an early release draft of an IRS tax form, instructions, or publication, which the IRS is providing for your information. **Do not file draft forms** and do **not** rely on draft forms, instructions, and publications for filing. We do **not** release draft forms until we believe we have incorporated all changes (except when explicitly stated on this coversheet). However, unexpected issues occasionally arise, or legislation is passed—in this case, we will post a new draft of the form to alert users that changes were made to the previously posted draft. Thus, there are never any changes to the last posted draft of a form and the final revision of the form. Forms and instructions generally are subject to OMB approval before they can be officially released, so we post only drafts of them until they are approved. Drafts of instructions and publications usually have some changes before their final release.

Early release drafts are at IRS.gov/DraftForms and remain there after the final release is posted at IRS.gov/LatestForms. All information about all forms, instructions, and pubs is at IRS.gov/Forms.

Almost every form and publication has a page on IRS.gov with a friendly shortcut. For example, the Form 1040 page is at IRS.gov/Form1040; the Pub. 501 page is at IRS.gov/Pub501; the Form W-4 page is at IRS.gov/W4; and the Schedule A (Form 1040/SR) page is at IRS.gov/ScheduleA. If typing in a link above instead of clicking on it, be sure to type the link into the address bar of your browser, not a Search box.

If you wish, you can submit comments to the IRS about draft or final forms, instructions, or publications at IRS.gov/FormsComments. We cannot respond to all comments due to the high volume we receive and may not be able to consider many suggestions until the subsequent revision of the product.

If you have comments on reducing paperwork and respondent (filer) burden, with respect to draft or final forms, please respond to the relevant information collection through the Federal Register process; for more info, click here.

Department of the Treasury
Internal Revenue Service

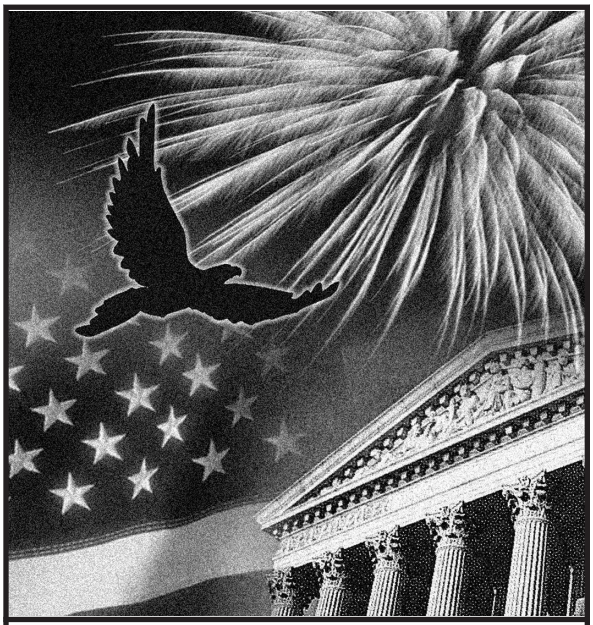
Publication 80
Cat. No. 46153G

(Circular SS),

Federal Tax Guide for Employers in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands

For use in **2020**

DRAFT AS OF November 21, 2019



Get forms and other information faster and easier at:
- *IRS.gov* (English)
- *IRS.gov/Spanish* (Español)
- *IRS.gov/Chinese* (中文)
- *IRS.gov/Korean* (한국어)
- *IRS.gov/Russian* (Русский)
- *IRS.gov/Vietnamese* (TiếngViệt)

Contents

What's New . . . 1
Reminders . . . 2
Calendar . . . 4
Introduction . . . 5
1. Employer Identification Number (EIN) . . . 6
2. Who Are Employees? . . . 6
3. Employee's Social Security Number (SSN) . . . 7
4. Wages and Other Compensation . . . 9
5. Tips . . . 10
6. Social Security and Medicare Taxes for Farmworkers . . . 10
7. How To Figure Social Security and Medicare Taxes . . . 11
8. Depositing Taxes . . . 12
9. Employer's Returns . . . 17
10. Wage and Tax Statements . . . 19
11. Federal Unemployment (FUTA) Tax—U.S. Virgin Islands Employers Only . . . 20
12. Special Rules for Various Types of Employment and Payments . . . 22
13. Federal Agency Certifying Requirements of Federal Income Taxes Withheld From U.S. Government Employees and Federal Pension Recipients . . . 27
How To Get Tax Help . . . 29

Future Developments

For the latest information about developments related to Pub. 80, such as legislation enacted after it was published, go to *IRS.gov/Pub80.*

What's New

Social security and Medicare tax for 2020. The social security tax rate is 6.2% each for the employee and employer, unchanged from 2019. The social security wage base limit is $137,700.

The Medicare tax rate is 1.45% each for the employee and employer, unchanged from 2019. There is no wage base limit for Medicare tax.

Social security and Medicare taxes apply to the wages of household workers you pay $2,200 or more in cash wages in 2020. Social security and Medicare taxes apply to

election workers who are paid $1,900 or more in cash or an equivalent form of compensation in 2020.

New Form 1099-NEC. There is a new Form 1099-NEC to report nonemployee compensation paid in 2020. The 2020 Form 1099-NEC will be due February 1, 2021. For nonemployee compensation paid in 2019, continue to use Form 1099-MISC, which is due January 31, 2020.

Disaster tax relief. Disaster tax relief is available for those impacted by disasters. For more information about disaster relief, go to *IRS.gov/DisasterTaxRelief*.

DRAFT As of November 21, 2019

Reminders

Moving expense reimbursement. P.L. 115-97, Tax Cuts and Jobs Act, suspends the exclusion for qualified moving expense reimbursements from your employee's income for tax years beginning after 2017 and before 2026. However, the exclusion is still available in the case of a member of the U.S. Armed Forces on active duty who moves because of a permanent change of station due to a military order. The exclusion applies only to reimbursement of moving expenses that the member could deduct if he or she had paid or incurred them without reimbursement. See *Moving Expenses* in Pub. 3, Armed Forces' Tax Guide, for the definition of what constitutes a permanent change of station and to learn which moving expenses are deductible.

Qualified small business payroll tax credit for increasing research activities. For tax years beginning after 2015, a qualified small business may elect to claim up to $250,000 of its credit for increasing research activities as a payroll tax credit against the employer's share of social security tax. The payroll tax credit must be elected on an original income tax return that is timely filed (including extensions). The portion of the credit used against the employer's share of social security tax is allowed in the first calendar quarter beginning after the date that the qualified small business filed its income tax return. The election and determination of the credit amount that will be used against the employer's share of social security tax are made on Form 6765, Credit for Increasing Research Activities. The amount from Form 6765, line 44, must then be reported on Form 8974, Qualified Small Business Payroll Tax Credit for Increasing Research Activities. Form 8974 is used to determine the amount of the credit that can be used in the current quarter. The amount from Form 8974, line 12, is reported on Form 941 or 941-SS, line 11 (or Form 943, line 12; Form 944, line 8). For more information about the payroll tax credit, see Notice 2017-23, 2017-16 I.R.B. 1100, available at *IRS.gov/irb/2017-16_IRB#NOT-2017-23*, and *IRS.gov/ResearchPayrollTC*. Also see the line 16 instructions in the Instructions for Form 941-SS (line 17 instructions in the Instructions for Form 943; line 13 instructions in the Instructions for Form 944).

Work opportunity tax credit for qualified tax-exempt organizations hiring qualified veterans. The work opportunity tax credit is available for eligible unemployed veterans who begin work on or after November 22, 2011, and before January 1, 2020. Qualified tax-exempt organizations that hire eligible unemployed veterans can claim the work opportunity tax credit against their payroll tax liability using Form 5884-C. For more information, go to *IRS.gov/WOTC*.

COBRA premium assistance credit. Effective for tax periods beginning after 2013, the credit for COBRA premium assistance payments can't be claimed on Form 941-SS, Employer's QUARTERLY Federal Tax Return—American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands. Instead, after filing your Form 941-SS, file Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, to claim the COBRA premium assistance credit. Filing a Form 941-X before filing a Form 941-SS for the quarter may result in errors or delays in processing your Form 941-X. For more information, see the Instructions for Form 941-SS. See the Instructions for Form 943 or the Instructions for Form 944 if you file one of these returns.

Definition of marriage. A marriage of two individuals is recognized for federal tax purposes if the marriage is recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of legal residence. Two individuals who enter into a relationship that is denominated as marriage under the laws of a foreign jurisdiction are recognized as married for federal tax purposes if the relationship would be recognized as marriage under the laws of at least one state, possession, or territory of the United States, regardless of legal residence. Individuals who have entered into a registered domestic partnership, civil union, or other similar relationship that isn't denominated as a marriage under the law of the state, possession, or territory of the United States where such relationship was entered into aren't lawfully married for federal tax purposes, regardless of legal residence.

Certification program for professional employer organizations (PEOs). The Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014 required the IRS to establish a voluntary certification program for PEOs. PEOs handle various payroll administration and tax reporting responsibilities for their business clients and are typically paid a fee based on payroll costs. To become and remain certified under the certification program, certified professional employer organizations (CPEOs) must meet various requirements described in sections 3511 and 7705 and related published guidance. Certification as a CPEO may affect the employment tax liabilities of both the CPEO and its customers. A CPEO generally is treated for employment tax purposes as the employer of any individual who performs services for a customer of the CPEO and is covered by a contract described in section 7705(e)(2) between the CPEO and the customer (CPEO contract), but only for wages and other compensation paid to the individual by the CPEO. To become a CPEO, the organization must apply through the IRS Online Registration System. For more information or to apply to become a CPEO, go to *IRS.gov/CPEO*. Also see Revenue Procedure 2017-14, 2017-3, I.R.B. 426, available at *IRS.gov/irb/2017-03_IRB#RP-2017-14*.

Outsourcing payroll duties. Generally, as an employer, you're responsible to ensure that tax returns are filed and deposits and payments are made, even if you contract with a third party to perform these acts. You remain responsible if the third party fails to perform any required action. Before you choose to outsource any of your payroll and related tax duties (that is, withholding, reporting, and paying over social security, Medicare, FUTA, and income taxes) to a third-party payer, such as a payroll service provider or reporting agent, go to *IRS.gov/OutsourcingPayrollDuties* for helpful information on this topic. If a CPEO pays wages and other compensation to an individual performing services for you, and the services are covered by a contract described in section 7705(e)(2) between you and the CPEO (CPEO contract), then the CPEO generally is treated as the employer, but only for wages and other compensation paid to the individual by the CPEO. However, with respect to certain employees covered by a CPEO contract, you may also be treated as an employer of the employees and, consequently, may also be liable for federal employment taxes imposed on wages and other compensation paid by the CPEO to such employees. For more information on the different types of third-party payer arrangements, see section 16 in Pub. 15.

Residents of the Philippines working in the Commonwealth of the Northern Mariana Islands (CNMI). Employers must withhold and pay social security and Medicare taxes on wages and other compensation paid to residents of the Philippines who don't hold an H-2 status for services performed as employees in the CNMI after December 31, 2014, unless those workers are eligible for exemption from social security and Medicare taxes under an exception listed in section 12. For more information, see Announcement 2012-43, 2012-51 I.R.B. 723, available at *IRS.gov/irb/2012-51_IRB#ANN-2012-43*.

CNMI government employees are subject to social security and Medicare taxes. Beginning in the fourth calendar quarter of 2012, CNMI government employees are subject to social security and Medicare taxes.

Federal employers in the CNMI. The U.S. Treasury Department and the CNMI Division of Revenue and Taxation entered into an agreement under 5 U.S.C. section 5517 in December 2006. Under this agreement, all federal employers (including the Department of Defense) are required to withhold CNMI income taxes (rather than federal income taxes) and deposit the CNMI taxes with the CNMI Treasury for employees who are subject to CNMI taxes and whose regular place of federal employment is in the CNMI. For more information, including details on completing Form W-2, go to *IRS.gov/5517Agreements*. Federal employers are also required to file quarterly and annual reports with the CNMI Division of Revenue and Taxation. For questions, contact the CNMI Division of Revenue and Taxation.

You must receive written notice from the IRS to file Form 944. If you've been filing Forms 941-SS and believe your employment taxes for the calendar year will be $1,000 or less, and you would like to file Form 944 instead of Forms 941-SS, you must contact the IRS during the first calendar quarter of the tax year to request to file Form 944. You must receive written notice from the IRS to file Form 944 instead of Forms 941-SS before you may file this form. For more information on requesting to file Form 944, including the methods and deadlines for making a request, see the Instructions for Form 944.

Employers can request to file Forms 941-SS instead of Form 944. If you received notice from the IRS to file Form 944 but would like to file Forms 941-SS instead, you must contact the IRS during the first calendar quarter of the tax year to request to file Forms 941-SS. You must receive written notice from the IRS to file Forms 941-SS instead of Form 944 before you may file these forms. For more information on requesting to file Forms 941-SS, including the methods and deadlines for making a request, see the Instructions for Form 944.

Change of business address or responsible party. Notify the IRS immediately if you change your business address or responsible party. Complete and mail Form 8822-B to notify the IRS of a business address or responsible party change. For a definition of "responsible party," see the Instructions for Form SS-4.

Federal tax deposits must be made by electronic funds transfer (EFT). You must use EFT to make all federal tax deposits. Generally, an EFT is made using the Electronic Federal Tax Payment System (EFTPS). If you don't want to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make electronic deposits on your behalf. Also, you may arrange for your financial institution to initiate a same-day wire payment on your behalf. EFTPS is a free service provided by the Department of the Treasury. Services provided by your tax professional, financial institution, payroll service, or other third party may have a fee.

For more information on making federal tax deposits, see *How To Deposit* in section 8.

For more information about EFTPS or to enroll in EFTPS, go to *EFTPS.gov* or call 800-555-4477 or 800-733-4829 (TDD). Additional information about EFTPS is also available in Pub. 966.

Electronic filing and payment. Using electronic options can make filing a return and paying your federal tax easier. Use EFTPS to make deposits or pay in full, whether you rely on a tax professional or prepare your own taxes. You can use *IRS e-file* to file certain returns. If there is a balance due on the return, you can e-file and e-pay in a single step by authorizing an electronic funds withdrawal (EFW) from your bank account while e-filing. Don't use EFW to pay taxes that are required to be deposited. Go to *IRS.gov/EmploymentEfile* for more information on filing electronically. For more information on paying your taxes using EFW, go to *IRS.gov/EFW*. A fee may be charged to file electronically.

- For EFTPS, go to *EFTPS.gov*, or call EFTPS Customer Service at 800-555-4477 or 800-733-4829 (TDD).
- For electronic filing of Forms W-2AS, W-2CM, W-2GU, W-2VI, Wage and Tax Statements; W-3SS, Transmittal of Wage and Tax Statements; and W-2c, Corrected Wage and Tax Statement, go to *SSA.gov/employer*.

DRAFT AS OF November 21, 2019

If you're filing your tax return or paying your federal taxes electronically, a valid EIN is required at the time the return is filed or the payment is made. If a valid EIN isn't provided, the return or payment won't be processed. This may result in penalties. See section 1 for information about applying for an EIN.

Electronic option for filing Forms W-2AS, W-2CM, W-2GU, or W-2VI. Employers in American Samoa, the CNMI, Guam, and the U.S. Virgin Islands can use the Social Security Administration's (SSA's) W-2 Online service to create, save, print, and submit up to 50 Forms W-2AS, W-2CM, W-2GU, or W-2VI at a time over the Internet. If you use the SSA's Form W-2 Online service, Form W-3SS will be generated automatically based on your Forms W-2AS, W-2CM, W-2GU, or W-2VI. For more information, visit the SSA's website at *SSA.gov/bso*.

If you're required to file 250 or more Forms W-2AS, W-2CM, W-2GU, or W-2VI in calendar year 2020, you must file electronically. Failure to file electronically may result in penalties. For more information, see section 10.

Credit or debit card payments. You can pay the balance due shown on your employment tax return by credit or debit card. Your payment will be processed by a payment processor who will charge a processing fee. Don't use a credit or debit card to make federal tax deposits. For more information on paying your taxes with a credit or debit card, go to *IRS.gov/PayByCard*.

Online payment agreement. You may be eligible to apply for an installment agreement online if you can't pay the full amount of tax you owe when you file your employment tax return. For more information, see the instructions for your employment tax return or go to *IRS.gov/OPA*.

Dishonored payments. Any form of payment that is dishonored and returned from a financial institution is subject to a penalty. The penalty is $25 or 2% of the payment, whichever is more. However, the penalty on dishonored payments of $24.99 or less is an amount equal to the payment. For example, a dishonored payment of $18 is charged a penalty of $18.

Hiring new employees. Record the number and name from each new employee's social security card. An employee who doesn't have a social security card should apply for one on Form SS-5, Application for a Social Security Card. See section 3.

Reporting discrepancies between Forms 941-SS (or Form 944) and Forms W-2. File Schedule D (Form 941), Report of Discrepancies Caused by Acquisitions, Statutory Mergers, or Consolidations, to explain certain wage, tax, and payment discrepancies between Forms 941-SS (or Form 944), and Forms W-2 that were caused by acquisitions, statutory mergers, or consolidations. For more information, see the Instructions for Schedule D (Form 941).

Apply for an employer identification number (EIN) online. Go to *IRS.gov/EIN* to apply for an EIN online.

Private delivery services. You can use certain private delivery services (PDSs) designated by the IRS to meet the "timely mailing as timely filing" rule for tax returns. Go to *IRS.gov/PDS* for the current list of PDSs.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using a PDS, go to *IRS.gov/PDSstreetAddresses*. Select the mailing address listed on the webpage that is in the same state as the address to which you would mail returns filed without a payment, as shown in the instructions for your employment tax return.

PDSs can't deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.

Recordkeeping. Keep all records of employment taxes for 4 years. These should be available for IRS review.

There is no required format for such records, but they should include your EIN; the amounts and dates of all wage payments (including fringe benefits) and tips reported; the names, addresses, and occupations of employees receiving such payments and their social security numbers (SSNs); copies of returns filed; dates of employment; and the dates and amounts of deposits made. Farm employers must keep a record of the name, permanent address, and EIN of each crew leader. See *Farm Crew Leaders* in section 2.

Disregarded entities and qualified subchapter S subsidiaries (QSubs). Eligible single-owner disregarded entities and QSubs are treated as separate entities for employment tax purposes. Eligible single-member entities must report and pay employment taxes on wages paid to their employees using the entities' own names and EINs. See Regulations sections 1.1361-4(a)(7) and 301.7701-2(c)(2)(iv).

Pub. 5146 explains employment tax examinations and appeal rights. Pub. 5146 provides employers with information on how the IRS selects employment tax returns to be examined, what happens during an exam, and what options an employer has in responding to the results of an exam, including how to appeal the results. Pub. 5146 also includes information on worker classification issues and tip exams.

Photographs of missing children. The IRS is a proud partner with the *National Center for Missing & Exploited Children® (NCMEC)*. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Calendar

The following are important dates and responsibilities. The dates listed here haven't been adjusted for Saturdays, Sundays, and legal holidays (see the *Tip* next). Pub. 509, Tax Calendars (for use in 2020), adjusts the dates for Saturdays, Sundays, and legal holidays. See section 8 for information about depositing taxes reported on Forms

DRAFT AS OF November 21, 2019

941-SS, 943, and 944. See section 11 for information about depositing FUTA tax. Due dates for forms required for health coverage reporting aren't listed here. For these dates, see Pub. 509.

TIP *If any date shown next for filing a return, furnishing a form, or depositing taxes falls on a Saturday, Sunday, or legal holiday, the due date is the next business day. The term "legal holiday" means any legal holiday in the District of Columbia. A statewide legal holiday delays a filing due date only if the IRS office where you're required to file is located in that state. However, a statewide legal holiday doesn't delay the due date of federal tax deposits. See* Deposits Due on Business Days Only *in section 8. For any filing due date, you'll meet the "file" or "furnish" requirement if the envelope containing the return or form is properly addressed, contains sufficient postage, and is postmarked by the U.S. Postal Service on or before the due date, or sent by an IRS-designated PDS on or before the due date. See* Private delivery services *under* Reminders *for more information.*

Fiscal year taxpayers. The due dates listed next apply whether you use a calendar or a fiscal year.

By January 31

File Form 941-SS or Form 944. File Form 941-SS for the fourth quarter of the previous calendar year and deposit any undeposited taxes. You may pay these taxes with Form 941-SS if your total tax liability for the quarter is less than $2,500. File Form 944 for the previous calendar year instead of Form 941-SS if the IRS has notified you in writing to file Form 944. Pay any undeposited taxes with your Form 944. You may pay these taxes with Form 944 if your total tax liability for the year is less than $2,500. For additional rules on when you can pay your taxes with your return, see *Payment with Return* in section 8. If you timely deposited all taxes when due, you may file by February 10.

File Form 943. File Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, with the IRS. If you deposited all Form 943 taxes when due, you may file Form 943 by February 10.

File Form 940. U.S. Virgin Islands employers only must file Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, with the IRS. Pay or deposit (if more than $500) any balance of the tax due. If you deposited the full amount of taxes when due, you may file Form 940 by February 10.

Furnish Forms 1099 and W-2. Furnish each employee a completed 2019 Form W-2AS, W-2CM, W-2GU, or W-2VI. See section 10 for more information. Furnish 2019 Form 1099-MISC to payees for nonemployee compensation. Most Forms 1099 must be furnished to payees by January 31, but some can be furnished by February 15. For more information, see *When to furnish forms or statements* in part M of the General Instructions for Certain Information Returns.

File Form W-2. File with the SSA Copy A of all 2019 paper and electronic Forms W-2AS, W-2CM, W-2GU, or W-2VI and Form W-3SS, Transmittal of Wage and Tax Statements. For more information on reporting Form W-2 information to the SSA electronically, visit the SSA's Employer W-2 Filing Instructions & Information webpage at *SSA.gov/employer*. If filing electronically via the SSA's Form W-2 Online service, the SSA will generate Form W-3SS data from the electronic submission of Forms W-2AS, W-2CM, W-2GU, and W-2VI.

File Form 1099-MISC reporting nonemployee compensation. File with the IRS Copy A of all 2019 paper and electronic Forms 1099-MISC that report nonemployee compensation, with Form 1096, Annual Summary and Transmittal of U.S. Information Returns. For information on filing information returns electronically with the IRS, see Pub. 1220.

By April 30, July 31, October 31, and January 31

Deposit FUTA taxes. Deposit FUTA tax for the quarter (including any amount carried over from other quarters) if over $500. If $500 or less, carry it over to the next quarter. See section 11 for more information.

File Form 941-SS. File Form 941-SS and deposit any undeposited taxes. You may pay these taxes with Form 941-SS if your total tax liability for the quarter is less than $2,500. If you timely deposited all taxes when due, you may file by May 10, August 10, November 10, or February 10, respectively. Don't file Form 941-SS for these quarters if you've been notified to file Form 944 and you didn't request and receive written notice from the IRS to file quarterly Forms 941-SS.

Introduction

This publication is for employers whose principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or who have employees who are subject to income tax withholding for any of these jurisdictions. Employers and employees in these areas are generally subject to social security and Medicare taxes under the Federal Insurance Contributions Act (FICA). See section 6 and section 7 for more information. This publication summarizes employer responsibilities to collect, pay, and report these taxes.

Whenever the term "United States" is used in this publication, it includes U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

This publication also provides employers in the U.S. Virgin Islands with a summary of their responsibilities in connection with the tax under the Federal Unemployment Tax Act, known as FUTA tax. See section 11 for more information.

DRAFT AS OF November 21, 2019

Except as shown in the table in section 12, social security, Medicare, and FUTA taxes apply to every employer who pays taxable wages to employees or who has employees who report tips.

This publication doesn't include information relating to the self-employment tax (for social security and Medicare of self-employed persons). See Pub. 570, Tax Guide for Individuals With Income From U.S. Possessions, if you need this information.

This publication also doesn't include information relating to income tax withholding. In the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, contact your local tax department for information about income tax withholding. See Pub. 15 for information on U.S. federal income tax withholding and Pub. 15-T for the U.S. federal income tax withholding tables.

DRAFT AS OF November 21, 2019

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can send us comments from *IRS.gov/FormComments*.

Or you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments as we revise our tax forms, instructions, and publications. We can't answer tax questions sent to the above address.

Ordering forms and publications. Visit *IRS.gov/Forms* to download forms, instructions, and publications. Otherwise, you can go to *IRS.gov/OrderForms* to order current and prior-year forms and instructions. Your order should arrive within 10 business days.

Tax questions. If you have a tax question not answered by this publication, check IRS.gov and *How To Get Tax Help* at the end of this publication.

1. Employer Identification Number (EIN)

An EIN is a nine-digit number that the IRS issues. Its format is 00-0000000. It is used to identify the tax accounts of employers and certain other organizations and entities that have no employees. Use your EIN on all of the items that you send to the IRS and the SSA for your business.

If you don't have an EIN, you may apply for one online by visiting *IRS.gov/EIN*. You may also apply for an EIN by faxing or mailing Form SS-4 to the IRS. If the principal business was created or organized outside of the United States or U.S. territories, you may also apply for an EIN by calling 267-941-1099 (toll call). Don't use an SSN in place of an EIN.

If you don't have an EIN by the time a return is due, file a paper return and enter "Applied For" and the date that you applied for it in the space shown for the number. If you took over another employer's business, don't use that employer's EIN.

You should have only one EIN. If you have more than one, write to the IRS office where you file your returns using the "without a payment" address in the Instructions for Form 941-SS, Instructions for Form 944, or Instructions for Form 943. Or call the IRS Business & Specialty Tax Line at 800-829-4933. Persons who are deaf, hard of hearing, or have a speech disability (TDD/TTY users) may call 800-829-4059. The IRS will tell you which EIN to use. For more information, see Pub. 1635.

2. Who Are Employees?

Generally, employees are defined either under common law or under special statutes for certain situations. See Pub. 15-A for details on statutory employees and nonemployees.

Employee status under common law. Generally, a worker who performs services for you is your employee if you can control what will be done and how it will be done. This is so even when you give the employee freedom of action. What matters is that you have the right to control the details of how the services are performed. See Pub. 15-A for more information on how to determine whether an individual providing services is an independent contractor or an employee.

Generally, people in business for themselves aren't employees. For example, doctors, lawyers, veterinarians, and others in an independent trade in which they offer their services to the public are usually not employees. If the business is incorporated, corporate officers who work in the business are employees of the corporation.

If an employer-employee relationship exists, it doesn't matter what it is called. The employee may be called an agent or independent contractor. It also doesn't matter how payments are measured or paid, what they're called, or if the employee works full or part time.

Statutory employees. There are also some special definitions of employees for social security, Medicare, and FUTA taxes.

While the following persons may not be common law employees, they're considered employees for social security and Medicare purposes if the conditions under *Tests*, discussed later, are met.

a. An agent (or commission) driver who delivers meat, vegetable, fruit or bakery products; beverages (other than milk); or picks up and delivers laundry or dry cleaning for someone else.

b. A full-time life insurance salesperson who sells primarily for one company.

c. A homeworker who works at home or off premises by the guidelines of the person for whom the work is done, with materials or goods furnished by and returned to that person or to someone that person designates.

d. A traveling or city salesperson (other than an agent-driver or commission-driver) who works full time (except for sideline sales activities) for one firm or person getting orders from customers. The orders must be for merchandise for resale or supplies for use in the customer's business. The customers must be retailers, wholesalers, contractors, or operators of hotels, restaurants, or other businesses dealing with food or lodging.

Tests. Withhold social security and Medicare taxes from statutory employees' wages if all three of the following tests apply.

1. The service contract states or implies that almost all of the services are to be performed personally by them.
2. They have little or no investment in the equipment and property used to perform the services (other than an investment in transportation facilities).
3. The services are performed on a continuing basis for the same payer.

Persons in *a* or *d*, earlier, are also employees for FUTA tax purposes if tests 1 through 3 are met (U.S. Virgin Islands only).

Pub. 15-A gives examples of the employer-employee relationship.

Statutory nonemployees. Certain direct sellers, qualified real estate agents, and certain companion sitters are, by law, considered nonemployees. They're generally treated as self-employed for employment tax purposes. See Pub. 15-A for details.

H-2A agricultural workers. On Form W-2, don't check box 13 (Statutory employee) as H-2A workers aren't statutory employees.

Treating employees as nonemployees. If you incorrectly treated an employee as a nonemployee and didn't withhold social security and Medicare taxes, you'll be liable for the taxes. See *Treating employees as nonemployees* in section 2 of Pub.15, for details on Internal Revenue Code section 3509, which may apply.

IRS help. If you want the IRS to determine if a worker is an employee, file Form SS-8.

Voluntary Classification Settlement Program (VCSP). Employers who are currently treating their workers (or a class or group of workers) as independent contractors or other nonemployees and want to voluntarily reclassify their workers as employees for future tax periods may be eligible to participate in the VCSP if certain requirements are met. File Form 8952 to apply for the VCSP. For more information, go to *IRS.gov/VCSP*.

Business Owned and Operated by Spouses

If you and your spouse jointly own and operate a business and share in the profits and losses, you may be partners in a partnership, whether or not you have a formal partnership agreement. See Pub. 541 for more details. The partnership is considered the employer of any employees, and is liable for any employment taxes due on wages paid to its employees.

Exception—Qualified joint venture. If you and your spouse materially participate as the only members of a jointly owned and operated business, and you file a joint Form 1040, U.S. Individual Income Tax Return; joint Form 1040-SR, U.S. Tax Return for Seniors; or joint Form 1040-SS, U.S. Self-Employment Tax Return—U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, or Puerto Rico; you can make a joint election to be taxed as a qualified joint venture instead of a partnership. See the Instructions for Schedule C (Form 1040 or 1040-SR) or the Instructions for Form 1040-SS. Spouses electing qualified joint venture status are treated as sole proprietors for federal tax purposes. Either of the sole proprietor spouses may report and pay the employment taxes due on wages paid to the employees, using the EIN of that spouse's sole proprietorship. For more information on qualified joint ventures, go to *IRS.gov/QJV*.

Farm Crew Leaders

You're an employer of farmworkers if you're a crew leader. A crew leader is a person who furnishes and pays (either on his or her own behalf or on behalf of the farm operator) workers to do farmwork for the farm operator. If there is no written agreement between you and the farm operator stating that you're his or her employee, and if you pay the workers (either for yourself or for the farm operator), then you're a crew leader.

3. Employee's Social Security Number (SSN)

An employee's SSN consists of nine digits separated as follows: 000-00-0000. You must get each employee's name and SSN and enter them on Form W-2AS, W-2CM, W-2GU, or W-2VI. If you don't report the employee's correct name and SSN, you may owe a penalty unless you have reasonable cause. See Pub. 1586 for information on the requirement to solicit the employee's SSN.

Employee's social security card. You should ask the employee to show you his or her social security card. The employee may show the card if it is available. Don't accept a social security card that says "Not valid for employment." A social security number issued with this legend doesn't permit employment. You may, but you're not required to, photocopy the social security card if the

DRAFT AS OF November 23, 2019

employee provides it. For more information, go to *SSA.gov/ssnumber/cards.htm*.

Applying for a social security card. Any employee who is legally eligible to work in the United States and doesn't have a social security card can get one by completing Form SS-5, Application for a Social Security Card, and submitting the necessary documentation. You can get Form SS-5 from the SSA website at *SSA.gov/forms/ss-5.pdf* or see *Where to get and file SSN application forms*, later. The employee must complete and sign Form SS-5; it can't be filed by the employer. You may be asked to supply a letter to accompany Form SS-5 if the employee has exceeded his or her yearly or lifetime limit for the number of replacement cards allowed.

Applying for an SSN. If you file Form W-2AS, W-2CM, W-2GU, or W-2VI on paper and your employee applied for an SSN but doesn't have one when you must file Form W-2AS, W-2CM, W-2GU, or W-2VI, enter "Applied For" on the form. If you're filing electronically, enter all zeros (000-00-0000 if creating forms online or 000000000 if uploading a file) in the social security number field. When the employee receives the SSN, file Copy A of Form W-2c with the SSA to show the employee's SSN. Furnish copies B, C, and 2 of Form W-2c to the employee. Up to 25 Forms W-2c for each Form W-3c, Transmittal of Corrected Wage and Tax Statements, may be filed per session over the Internet, with no limit on the number of sessions. For more information, visit the SSA's Employer W-2 Filing Instructions & Information webpage at *SSA.gov/employer*. Advise your employee to correct the SSN on his or her original Form W-2AS, W-2CM, W-2GU, or W-2VI.

Correctly record the employee's name and SSN. Record the name and SSN of each employee as they appear on his or her social security card. If the name isn't correct as shown on the card (for example, because of marriage or divorce), the employee should request an updated card from the SSA. Continue to use the old name until the employee shows you the updated social security card with the corrected name.

If the SSA issues the employee an updated card after a name change, or a new card with a different SSN after a change in alien work status, file a Form W-2c to correct the name/SSN reported on the most recently filed Form W-2, W-2AS, W-2CM, W-2GU, or W-2VI. It isn't necessary to correct other years if the previous name and SSN were used for years before the most recent Form W-2.

Where to get and file SSN application forms. U.S. Social Security Administration offices located in the territories.

U.S. Virgin Islands
1st Floor, Suite 14
8000 Nisky Shopping Center
St. Thomas, VI 00802

Guam
Suite 155
770 East Sunset Blvd
Tiyan Barrigada, GU 96913

American Samoa
Centennial Building
3rd Floor, Suite 302
Pago Pago, AS 96799

Commonwealth of the Northern Mariana Islands
MH II Building, Suite 201
Marina HGT Business Pk
Saipan, MP 96950

Additional information is available on the SSA website on the Social Security Office Locator page at *secure.ssa.gov/ICON.*

Verification of SSNs. Employers and authorized reporting agents can use the Social Security Number Verification Service (SSNVS) to instantly verify that an employee name matches an SSN for up to 10 names and SSNs (per screen) at a time, or submit an electronic file of up to 250,000 names and SSNs and usually receive the results the next business day. Go to *SSA.gov/employer/ssnv.htm* for more information. A person may have a valid SSN but not be authorized to work in the United States. Employers may use E-Verify at *e-verify.gov* to confirm the employment eligibility of newly hired employees.

Registering for SSNVS. You must register online to use SSNVS. To register, visit the SSA's website at *SSA.gov/bso* and click on the *Register* link under *Business Services Online*. Follow the registration instructions to obtain a user identification (ID) and password. You'll need to provide the following information about yourself and your company.

- Name.
- SSN.
- Date of birth.
- Type of employer.
- EIN.
- Company name, address, and telephone number.
- Email address.

When you have completed the online registration process, the SSA will mail a one-time activation code to you. You must enter the activation code online to use SSNVS. Your employees must receive authorization from you to use SSNVS. If your employees register, the one-time activation code will be mailed to you.

DRAFT AS OF November 21, 2019

4. Wages and Other Compensation

DRAFT AS OF November 21, 2019

Generally, all wages are subject to social security and Medicare tax (and FUTA tax for U.S. Virgin Islands employers). However, wages subject to social security tax and FUTA tax are limited by a wage base amount that you pay to each employee for the year. The wage base for social security tax is $137,700 for 2020. After you pay $137,700 to an employee in 2020, including tips, don't withhold social security tax on any amount that you later pay to the employee for the year. The wage base for FUTA tax is $7,000 for 2020. All wages are subject to Medicare tax. The wages may be in cash or in other forms, such as an automobile for personal use. Wages include salaries, vacation allowances, bonuses, commissions, and fringe benefits. It doesn't matter how payments are measured or paid.

See the table in section 12 for exceptions to social security, Medicare, and FUTA taxes on wages. See section 5 and section 6 for a discussion of how the rules apply to tips and farmworkers.

Social security and Medicare taxes apply to most payments of sick pay, including payments by third parties such as insurance companies. Special rules apply to the reporting of third-party sick pay. For details, see Pub. 15-A.

Determine the value of noncash pay (such as goods, lodging, and meals) by its fair market value. However, see *Fringe Benefits*, later. Except for farmworkers and household employees, this kind of pay may be subject to social security, Medicare, and FUTA taxes.

Back pay, including retroactive wage increases (but not amounts paid as liquidated damages), is taxed as ordinary wages in the year paid. For information on reporting back pay to the SSA, see Pub. 957.

Travel and business expenses. Payments to your employee for travel and other necessary expenses of your business generally are included in taxable wages if (a) your employee isn't required to or doesn't substantiate timely those expenses to you with receipts or other documentation, or (b) you advance an amount to your employee for business expenses and your employee isn't required to or doesn't return timely any amount that he or she doesn't substantiate.

Sick pay. In general, sick pay is any amount that you pay, under a plan that you take part in, to an employee because of sickness or injury. These amounts are sometimes paid by a third party, such as an insurance company. In either case, these payments are subject to social security and Medicare taxes (and FUTA tax for U.S. Virgin Islands employers). These taxes don't apply to sick pay paid more than 6 calendar months after the last calendar month in which the employee worked for the employer. Pub. 15-A explains the employment tax rules that apply to sick pay, disability benefits, and similar payments to employees.

Fringe Benefits

Generally, fringe benefits are includible in the wages of an employee and are subject to employment taxes. Examples of fringe benefits include the use of an automobile, aircraft flights that you provide, free or discounted commercial airline flights, vacations, discounts on property or services, memberships in country clubs or other social clubs, and tickets to entertainment or sporting events. In general, the amount included in the employee's income is the excess of the fair market value of the benefit over the sum of any amount paid for it by the employee and any amount excluded by law. For more information, see Pub. 15-B.

When taxable fringe benefits are treated as paid. You can choose to treat certain taxable noncash fringe benefits (including personal use of an automobile provided by you) as paid by the pay period, quarter, or on any other basis that you choose, but they must be treated as paid at least annually. You don't have to make a formal choice of payment dates or notify the IRS. You don't have to use the same basis for all employees. You may change methods as often as you like, as long as all benefits provided in a calendar year are treated as paid no later than December 31 of the calendar year. However, see *Special accounting rule for fringe benefits provided during November and December*, later.

You can treat the value of a single taxable noncash fringe benefit as paid on one or more dates in the same calendar year, even if the employee gets the entire benefit at one time. However, once you elect the payment dates, you must report the taxes on your return in the same tax period in which you treated them as paid. This election doesn't apply to a fringe benefit where real property or investment personal property is transferred.

Withholding social security and Medicare taxes on fringe benefits. You add the value of fringe benefits to regular wages for a payroll period and figure social security and Medicare taxes on the total.

If you withhold less than the required amount of social security and Medicare taxes from the employee in a calendar year but report and pay the proper amount, you may recover the taxes from the employee.

Depositing taxes on fringe benefits. Once you choose payment dates for taxable noncash fringe benefits, you must deposit taxes in the same deposit period that you treat the fringe benefits as paid. You may make a reasonable estimate of the value of the fringe benefits. In general, the value of taxable noncash fringe benefits provided in a calendar year must be determined by January 31 of the following year.

You may claim a refund of overpayments or elect to have any overpayment applied to the next employment tax return. If deposits are underpaid, see *Deposit Penalties* in section 8.

Valuation of vehicles provided to employees. See Pub. 15-B to determine the value of a vehicle provided to an employee. For reporting information to employees, see the box 14 instructions in the General Instructions for Forms W-2 and W-3.

Special accounting rule for fringe benefits provided during November and December. You may choose to treat the value of taxable noncash fringe benefits provided during November and December as paid in the next year. However, this applies only to those benefits that you actually provided during November and December, not to those you merely treated as paid during those months.

If you use this rule, you must notify each affected employee between the time of the employee's last paycheck of the calendar year and at or near the time that you give the employee Form W-2AS, W-2CM, W-2GU, or W-2VI. If you use the special accounting rule, your employee must also use it for the same period that you use it. You can't use this rule for a fringe benefit of real property or tangible or intangible real property of a kind normally held for investment that is transferred to your employee.

DRAFT As of November 21, 2019

5. Tips

Cash tips that your employee receives from customers generally are subject to social security and Medicare withholding. Your employee must report cash tips to you by the 10th of the month after the month that the tips are received. Cash tips include tips paid by cash, check, debit card, and credit card. The report should include tips you paid over to the employee for charge customers, tips the employee received directly from customers, and tips received from other employees under any tip-sharing arrangement. Both directly and indirectly tipped employees must report tips to you. The report shouldn't include tips that the employee paid out to other employees. No report is required for months when tips are less than $20. Your employees report tips on Form 4070 or on a similar statement. They may also use Form 4070A to keep a record of their tips. Both forms are included in Pub. 1244 available at IRS.gov.

The statement must be signed and dated by the employee and must include:

- The employee's name, address, and SSN;
- Your name and address;
- The month and year (or the beginning and ending dates, if the statement is for a period of less than 1 calendar month) that the report covers; and
- The total tips received during the month or period.

TIP *You're permitted to establish a system for electronic tip reporting by employees. See Regulations section 31.6053-1(d).*

Collecting taxes on tips. You must collect the employee social security and Medicare taxes on the employee's tips. You can also collect these taxes from the employee's wages or from other funds that he or she makes available. Stop collecting the employee social security tax when his or her total wages and tips for 2020 reach $137,700. Collect the employee Medicare tax for the whole year on all wages and tips.

You're responsible for the employer social security tax on wages and tips until the wages (including tips) reach the wage base limit. You're responsible for the employer Medicare tax for the whole year on all wages and tips. Tips are considered to be paid at the time the employee reports them to you. Deposit taxes on tips based on your deposit schedule as described in section 8. File Form 941-SS (or Form 944) to report withholding and employer taxes on tips.

The withholding rules for withholding an employee's share of Medicare tax on tips also apply to withholding the Additional Medicare Tax once wages and tips exceed $200,000 in the calendar year.

Ordering rule. If, by the 10th of the month after the month you received an employee's report on tips, you don't have enough employee funds available to deduct the employee social security and Medicare tax on tips, you no longer have to collect it and aren't liable for it.

Reporting tips. Report tips and any collected and uncollected social security in boxes 1, 5, 7, and 12 on Forms W-2AS, W-2CM, W-2GU, or W-2VI and on Form 941-SS, lines 5b, 5c, and, if applicable, 5d (Form 944, lines 4b, 4c, and, if applibable, 4d). Don't include any uncollected Additional Medicare Tax in box 12 of Form W-2. Report a negative adjustment on Form 941-SS, line 9 (Form 944, line 6), for the uncollected social security and Medicare taxes. The table in section 12 shows how tips are treated for FUTA tax purposes.

Revenue Ruling 2012-18 provides guidance for employers regarding social security and Medicare taxes imposed on tips, including information on the reporting of the employer share of social security and Medicare taxes under section 3121(q), the difference between tips and service charges, and the section 45B credit. See Revenue Ruling 2012-18, 2012-26 I.R.B. 1032, available at *IRS.gov/irb/2012-26_IRB#RR-2012-18*.

6. Social Security and Medicare Taxes for Farmworkers

The tests described next apply only to services that are defined as agricultural labor (farmwork). In general, you're an employer of farmworkers if your employees:

- Raise or harvest agricultural or horticultural products on your farm (including the raising and feeding of livestock);
- Work in connection with the operation, management, conservation, improvement, or maintenance of your farm and its tools and equipment, if the major part of such service is performed on a farm;

- Provide services relating to salvaging timber, or clearing land of brush and other debris, left by a hurricane (also known as hurricane labor), if the major part of such service is performed on a farm;
- Handle, process, or package any agricultural or horticultural commodity in its unmanufactured state if you produced over half of the commodity (for a group of up to 20 unincorporated operators, all of the commodity); or
- Do work for you related to cotton ginning, turpentine, gum resin products, or the operation and maintenance of irrigation facilities.

DRAFT AS OF November 21, 2019

For this purpose, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, as well as plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

Farmwork doesn't include reselling activities that don't involve any substantial activity of raising agricultural or horticultural commodities, such as a retail store or a greenhouse used primarily for display or storage. It also doesn't include processing services which change a commodity from its raw or natural state, or services performed after a commodity has been changed from its raw or natural state.

A "share farmer" working for you isn't your employee. However, the share farmer may be subject to self-employment tax. In general, share farming is an arrangement in which certain commodity products are shared between the farmer and the owner (or tenant) of the land. For details, see Regulations section 31.3121(b)(16)-1.

The $150 Test or the $2,500 Test

All cash wages that you pay to any employee for farmwork are subject to social security and Medicare taxes if either of the following two tests is met.

- You pay cash wages to the employee of $150 or more in a year (count all cash wages paid on a time, piecework, or other basis) for farmwork. The $150 test applies separately to each farmworker that you employ. If you employ a family of workers, each member is treated separately. Don't count wages paid by other employers.
- The total that you pay for farmwork (cash and noncash) to all of your employees is $2,500 or more during the year.

Exceptions. Annual cash wages of less than $150 you pay to a seasonal farmworker aren't subject to social security and Medicare taxes, even if you pay $2,500 or more to all your farmworkers. However, these wages count toward the $2,500 test for determining whether other farmworkers' wages are subject to social security and Medicare taxes.

A seasonal farmworker is a worker who:

- Is employed in agriculture as a hand-harvest laborer,
- Is paid piece rates in an operation that is usually paid on a piece-rate basis in the region of employment,
- Commutes daily from his or her home to the farm, and
- Had been employed in agriculture less than 13 weeks in the preceding calendar year.

7. How To Figure Social Security and Medicare Taxes

The tax rate for social security is 6.2% (amount withheld) each for the employer and employee (12.4% total). The social security wage base limit is $137,700. The tax rate for Medicare is 1.45% (amount withheld) each for the employee and employer (2.9% total). There is no wage base limit for Medicare tax; all covered wages are subject to Medicare tax. Multiply each wage payment by these percentages to figure the tax to withhold from employees. Employers report both the employee and employer shares on Form 941-SS, 944, or Form 943 (farm employment). See section 5 for information on tips.

Additional Medicare Tax withholding. In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of $200,000 in a calendar year. You're required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of $200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare Tax. All wages that are subject to Medicare tax are subject to Additional Medicare Tax withholding if paid in excess of the $200,000 withholding threshold.

For more information on what wages are subject to Medicare tax, see the chart *Special Rules for Various Types of Employment and Payments* in section 12. For more information on Additional Medicare Tax, go to *IRS.gov/ADMT*.

Deducting the tax. Deduct the employee tax from each wage payment. If you're not sure that the wages that you pay to a farmworker during the year will be taxable, you may either deduct the tax when you make the payments or wait until the $2,500 test or the $150 test explained in section 6 has been met.

Employee's portion of taxes paid by employer. If you pay your employee's social security and Medicare taxes without deducting them from the employee's pay, you must include the amount of the payments in the employee's wages for social security and Medicare taxes. This increase in the employee's wage payment for your payment of the employee's social security and Medicare taxes is also subject to employee social security and Medicare taxes. This again increases the amount of the additional taxes that you must pay. For more information, see Revenue Ruling 86-14, 1986-1 C.B. 304.

Household and agricultural employers. This discussion doesn't apply to household and agricultural employers. If you pay a household or agricultural employee's social security and Medicare taxes, these payments must be included in the employee's wages. However, this wage increase due to the tax payments isn't subject to social security or Medicare taxes as discussed in this section. See Pub. 15-A for details.

Sick pay payments. Social security and Medicare taxes apply to most payments of sick pay, including payments made by third parties such as insurance companies. For details on third-party payers of sick pay, see Pub. 15-A.

Motion picture project employers. All wages paid by a motion picture project employer to a motion picture project worker during a calendar year are subject to a single social security tax wage base ($137,700 for 2020) and a single FUTA tax wage base ($7,000 for 2020) regardless of the worker's status as a common law employee of multiple clients of the motion picture project employer. For more information, including the definition of a motion picture project employer and motion picture project worker, see Internal Revenue Code section 3512.

DRAFT AS OF November 21, 2019

8. Depositing Taxes

You must deposit social security and Medicare taxes if your tax liability (Form 941-SS, line 12; Form 944, line 9; or Form 943, line 13) is $2,500 or more for the tax return period. You must make the deposit by EFT. For more information about EFT, see *How To Deposit*, later in this section.

Payment with Return

$2,500 rule. Instead of making deposits during the current quarter, you can pay your total Form 941-SS tax liability when you timely file Form 941-SS if:

- Your total Form 941-SS tax liability for either the current quarter or the preceding quarter is less than $2,500, and
- You don't incur a $100,000 next-day deposit obligation during the current quarter.

If you're not sure your total liability for the current quarter will be less than $2,500 (and your liability for the preceding quarter wasn't less than $2,500), make deposits using the semiweekly or monthly rules so you won't be subject to a failure-to-deposit (FTD) penalty.

Employers who have been notified to file Form 944 can pay their tax liability due for the fourth quarter with Form 944, if their fourth quarter tax liability is less than $2,500. Employers must have deposited any tax liability due for the first, second, and third quarters, according to the deposit rules, in order to avoid an FTD penalty for deposits due during those quarters.

CAUTION *Only monthly schedule depositors are allowed to make an Accuracy of Deposits Rule payment with the return. Semiweekly schedule depositors must timely deposit the amount. See* Accuracy of Deposits Rule *and* How To Deposit*, later in this section.*

When To Deposit

Under the rules discussed below, the only difference between farm and nonfarm workers' employment tax deposit rules is the lookback period. Therefore, farm and nonfarm workers are discussed together except where noted.

Depending on your total taxes reported during a lookback period (discussed below), you're either a monthly schedule depositor or a semiweekly schedule depositor.

The terms "monthly schedule depositor" and "semiweekly schedule depositor" don't refer to how often you pay your employees or how often you're required to make deposits. The terms identify which set of rules that you must follow when a tax liability arises. Your tax liability is based on the dates payments were made or wages were paid. For taxable noncash fringe benefits, see When taxable fringe benefits are treated as paid in section 4.

You'll need to determine your deposit schedule for a calendar year based on the total employment taxes reported on Forms 941-SS, line 12; Form 944, line 9; or Form 943, line 13, for your lookback period (defined below). If you filed both Forms 941-SS and 941 during the lookback period, combine the tax liabilities for these returns for purposes of determining your deposit schedule. Determine your deposit schedule for Form 943 separately from Forms 941-SS and 941.

Lookback period for employers of nonfarm workers. The lookback period for Form 941-SS (or Form 941) consists of four quarters beginning July 1 of the second preceding year and ending June 30 of the prior year. These four quarters are your lookback period even if you didn't report any taxes for any of the quarters. For 2020, the lookback period is July 1, 2018, through June 30, 2019.

Table 1. **Lookback Period for Calendar Year 2020**

Lookback Period			
July 1, 2018 through Sep. 30, 2018	Oct. 1, 2018 through Dec. 31, 2018	Jan. 1, 2019 through Mar. 31, 2019	Apr.1, 2019 through June 30, 2019

The lookback period for Form 944 is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2020 is calendar year 2018. In addition, for employers who filed Form 944 for 2018 or for 2019 and will file Form 941-SS (or Form 941) for 2020, the lookback period for 2020 is the second calendar year preceding the current calendar year, that is, 2018.

Lookback period for employers of farmworkers. The lookback period for Form 943 is the second calendar year

preceding the current calendar year. The lookback period for calendar year 2020 is calendar year 2018.

Adjustments to lookback period taxes. To determine your taxes for the lookback period, use only the tax that you reported on the original returns (Forms 941-SS, 943, or 944). Don't include any adjustments shown on Form 941-X, 943-X, or 944-X.

Example. An employer originally reported total taxes of $45,000 for the lookback period. The employer discovered during January 2020 that the tax reported during the lookback period was understated by $10,000 and corrected this error by filing Form 941-X. The employer is a monthly schedule depositor for 2020 because the lookback period tax liabilities are based on the amounts originally reported, and they were $50,000 or less. The $10,000 adjustment is also not treated as part of the 2020 taxes.

DRAFT AS OF November 21, 2019

Deposit Period

The term "deposit period" refers to the period during which tax liabilities are accumulated for each required deposit due date. For monthly schedule depositors, the deposit period is a calendar month. The deposit periods for semiweekly schedule depositors are Wednesday through Friday and Saturday through Tuesday.

Monthly Deposit Schedule

If your total tax reported for the lookback period is $50,000 or less, you're a monthly schedule depositor for the current year. You must deposit taxes on wage payments made during a calendar month by the 15th day of the following month.

New employers. Your tax liability for any quarter in the lookback period before the date you started or acquired your business is considered to be zero. Therefore, you're a monthly schedule depositor for the first calendar year of your business (but see the *$100,000 Next-Day Deposit Rule*, later in this section).

Semiweekly Deposit Schedule

If your total tax reported for the lookback period is more than $50,000, you're a semiweekly schedule depositor for the current year. If you're a semiweekly schedule depositor, you must deposit on Wednesday and/or Friday, depending on what day of the week that you make wage payments, as follows.

- Deposit taxes on wage payments made on Wednesday, Thursday, and/or Friday by the following Wednesday.
- Deposit taxes on wage payments made on Saturday, Sunday, Monday, and/or Tuesday by the following Friday.

Semiweekly depositors generally are not required to deposit twice a week if their payments were in the same semiweekly period unless the *$100,000 Next-Day Deposit Rule*, discussed later in this section, applies. For example, if you made a payment on both Wednesday and Friday and incurred taxes of $10,000 for each pay date, deposit the $20,000 on the following Wednesday. If you made no additional payments on Saturday through Tuesday, no deposit is due on Friday.

CAUTION *Semiweekly schedule depositors must complete Schedule B (Form 941), Report of Tax Liability for Semiweekly Schedule Depositors, and submit it with Form 941-SS. If you file Form 944 and are a semiweekly schedule depositor, complete Form 945-A, Annual Record of Federal Tax Liability, and submit it with your return (instead of Schedule B). If you file Form 943 and are a semiweekly schedule depositor, complete Form 943-A, Agricultural Employer's Record of Federal Tax Liability, and submit it with your return (instead of Schedule B).*

Semiweekly deposit period spanning two quarters (Form 941-SS filers). If you have more than one pay date during a semiweekly period and the pay dates fall in different calendar quarters, you'll need to make separate deposits for the separate liabilities.

Example. If you have a pay date on Wednesday, September 30, 2020 (third quarter), and another pay date on Thursday, October 1, 2020 (fourth quarter), two separate deposits will be required even though the pay dates fall within the same semiweekly period. Both deposits will be due on Wednesday, October 7, 2020.

Semiweekly deposit period spanning two return periods (Form 943 or Form 944 filers). The period covered by a return is the return period. The return period for annual Forms 943 and 944 is a calendar year. If you have more than one pay date during a semiweekly period and the pay dates fall in different return periods, you'll need to make separate deposits for the separate liabilities. For example, if you have a pay date on Wednesday, December 30, 2020, and another pay date on Friday, January 1, 2021, two separate deposits will be required even though the pay dates fall within the same semiweekly period. Both deposits will be due Wednesday, January 6, 2021 (3 business days from the end of the semiweekly deposit period).

Examples of Monthly and Semiweekly Schedules

Employers of nonfarm workers. Rose Co. reported Form 941-SS taxes as follows:

2019 Lookback Period	
3rd Quarter 2017	$12,000
4th Quarter 2017	12,000
1st Quarter 2018	12,000
2nd Quarter 2018	12,000
	$48,000

2020 Lookback Period	
3rd Quarter 2018	$12,000
4th Quarter 2018	12,000
1st Quarter 2019	12,000
2nd Quarter 2019	15,000
	$51,000

Rose Co. is a monthly schedule depositor for 2019 because its taxes for the four quarters in its lookback period ($48,000 for the 3rd quarter of 2017 through the 2nd quarter of 2018) weren't more than $50,000. However, for 2020, Rose Co. is a semiweekly schedule depositor because the total taxes for the four quarters in its lookback period ($51,000 for the 3rd quarter of 2018 through the 2nd quarter of 2019) exceeded $50,000.

DRAFT AS OF November 21, 2019

Employers of farmworkers. Red Co. reported taxes on its 2018 Form 943, line 13, of $48,000. On its 2019 Form 943, line 13, it reported taxes of $60,000.

Red Co. is a monthly schedule depositor for 2020 because its taxes for its lookback period ($48,000 for calendar year 2018) weren't more than $50,000. However, for 2021, Red Co. is a semiweekly schedule depositor because the total taxes for its lookback period ($60,000 for calendar year 2019) exceeded $50,000.

New agricultural employers. New agricultural employers filing Form 943 are monthly schedule depositors for the first and second calendar years of their business because their taxes for the lookback period (2 years) are considered to be zero. However, see the *$100,000 Next-Day Deposit Rule*, later.

Deposits Due on Business Days Only

If a deposit due date falls on a day that isn't a business day, the deposit is considered timely if it is made by the close of the next business day. A business day is any day other than a Saturday, Sunday, or legal holiday. For example, if a deposit is required to be made on Friday, but Friday is a legal holiday, the deposit is considered timely if it is made by the following Monday (if Monday is a business day).

Semiweekly schedule depositors have at least 3 business days following the close of the semiweekly period to make a deposit. If any of the 3 weekdays after the end of a semiweekly period is a legal holiday, you'll have an additional day for each day that is a legal holiday to make the required deposit. For example, if a semiweekly schedule depositor accumulated taxes for payments made on Friday and the following Monday is a legal holiday, the deposit normally due on Wednesday may be made on Thursday (this allows 3 business days to make the deposit).

Legal holiday. The term "legal holiday" means any legal holiday in the District of Columbia. For purposes of the deposit rules, the term "legal holiday" doesn't include other statewide legal holidays. Legal holidays for 2020 are listed next.

- January 1—New Year's Day
- January 20—Birthday of Martin Luther King, Jr.
- February 17—Washington's Birthday
- April 16—District of Columbia Emancipation Day
- May 25—Memorial Day
- July 3—Independence Day (observed)
- September 7—Labor Day
- October 12—Columbus Day
- November 11—Veterans Day
- November 26—Thanksgiving Day
- December 25—Christmas Day

Application of Monthly and Semiweekly Schedules

The following examples illustrate the procedure for determining the deposit date under the two different deposit schedules.

Monthly schedule example. Spruce Co. is a monthly schedule depositor with seasonal employees. It paid wages each Friday during May but didn't pay any wages during June. Under the monthly deposit schedule, Spruce Co. must deposit the combined tax liabilities for the May paydays by June 15. Spruce Co. doesn't have a deposit requirement for June (due by July 15) because no wages were paid and, therefore, it didn't have a tax liability for June.

Semiweekly schedule example. Green, Inc. is a semiweekly schedule depositor and pays wages once each month on the last Friday of the month. Although Green, Inc., has a semiweekly deposit schedule, it will deposit just once a month because it pays wages only once a month. The deposit, however, will be made under the semiweekly deposit schedule as follows: Green, Inc.'s tax liability for the April 24, 2020 (Friday), payday must be deposited by April 29, 2020 (Wednesday). Under the semiweekly deposit schedule, liabilities for wages paid on Wednesday through Friday must be deposited by the following Wednesday.

$100,000 Next-Day Deposit Rule

If you accumulate taxes of $100,000 or more on any day during a deposit period, you must deposit by the close of the next business day, whether you're a monthly or a semiweekly schedule depositor.

For purposes of the $100,000 rule, don't continue accumulating taxes after the end of a deposit period. For example, if a semiweekly schedule depositor has accumulated taxes of $95,000 on Tuesday and $10,000 on Wednesday, the $100,000 next-day deposit rule doesn't apply because the $10,000 is accumulated in the next

deposit period. Thus, $95,000 must be deposited by Friday and $10,000 must be deposited by the following Wednesday.

However, once you accumulate at least $100,000 in a deposit period, stop accumulating at the end of that day and begin to accumulate anew on the next day. For example, Fir Co. is a semiweekly schedule depositor. On Monday, Fir Co. accumulates taxes of $110,000 and must deposit on Tuesday, the next business day. On Tuesday, Fir Co. accumulates additional taxes of $30,000. Because the $30,000 isn't added to the previous $110,000 and is less than $100,000, Fir Co. doesn't have to deposit the $30,000 until Friday (following the semiweekly deposit schedule).

DRAFT AS OF November 21, 2019

CAUTION *If you're a monthly schedule depositor and you accumulate a $100,000 tax liability on any day during a month, you become a semiweekly schedule depositor on the next day and remain so for the remainder of the calendar year and for the following calendar year.*

Example. Elm, Inc. started its business on May 4, 2020. On Wednesday, May 6, it paid wages for the first time and accumulated a tax liability of $40,000. On Friday, May 8, Elm, Inc. paid wages and accumulated a liability of $60,000, making its accumulated Form 941-SS tax liability total $100,000. Elm, Inc. must deposit $100,000 by Monday, May 11, the next business day. Because this was the first year of its business, the tax liability for its lookback period is considered to be zero, and it would be a monthly schedule depositor based on the lookback rules. However, because Elm, Inc. accumulated $100,000 on May 8, it became a semiweekly schedule depositor on May 9. It will be a semiweekly schedule depositor for the remainder of 2020 and for 2021.

Accuracy of Deposits Rule

You're required to deposit 100% of your tax liability on or before the deposit due date. However, penalties won't be applied for depositing less than 100% if both of the following conditions are met.

1. Any deposit shortfall doesn't exceed the greater of $100 or 2% of the amount of taxes otherwise required to be deposited, and
2. The deposit shortfall is paid or deposited by the shortfall makeup date as described next.

Makeup date for deposit shortfall:

1. ***Monthly schedule depositor.*** Deposit or pay the shortfall by the due date of your Form 941-SS, 944, or 943 for the period in which the shortfall occurred. You may pay the shortfall with your return even if the amount is $2,500 or more.
2. ***Semiweekly schedule depositor.*** Deposit by the earlier of:
   a. The first Wednesday or Friday (whichever comes first) that comes on or after the 15th of the month following the month in which the shortfall occurred, or
   b. The return due date for the period in which the shortfall occurred.

For example, if a semiweekly schedule depositor has a deposit shortfall during June 2020, the shortfall makeup date is July 15, 2020 (Wednesday). However, if the shortfall occurred on the required April 1, 2020 (Wednesday), deposit due date for a March 27, 2020 (Friday), pay date, the return due date for the March 27, 2020, pay date (April 30, 2020) would come before the May 15, 2020 (Friday), shortfall makeup date. In this case, the shortfall must be deposited by April 30, 2020.

Employers of Both Farm and Nonfarm Workers

If you employ both farm and nonfarm workers, you must treat employment taxes for the farmworkers (Form 943 taxes) separately from employment taxes for the nonfarm workers (Form 941-SS or 944 taxes). Form 943 taxes and Form 941-SS (or Form 944) taxes aren't combined for purposes of applying any of the deposit rules.

If a deposit is due, deposit the Form 941-SS (or Form 944) taxes and Form 943 taxes separately, as discussed next.

How To Deposit

You must deposit employment taxes by EFT. See *Payment with Return*, earlier in this section, for exceptions explaining when taxes may be paid with the tax return instead of being deposited.

Electronic deposit requirement. You must use EFT to make all federal tax deposits. Generally, an EFT is made using EFTPS. If you don't want to use EFTPS, you can arrange for your tax professional, financial institution, payroll service, or other trusted third party to make electronic deposits on your behalf.

EFTPS is a free service provided by the Department of the Treasury. To get more information or to enroll in EFTPS, go to *EFTPS.gov* or call 800-555-4477 or 800-733-4829 (TDD). Additional information about EFTPS is also available in Pub. 966.

When you receive your EIN. If you're a new employer that indicated a federal tax obligation when requesting an EIN, you'll be pre-enrolled in EFTPS. You'll receive information about Express Enrollment in your EIN Package and an additional mailing containing your EFTPS personal identification number (PIN) and instructions for activating your PIN. Follow the steps in your "How To Activate Your Enrollment" brochure to activate your enrollment and begin making your payroll tax deposits. If you outsource any of your payroll and related tax duties to a third-party payer, such as a payroll service provider or reporting agent, be sure to tell them about your EFTPS enrollment.

Deposit record. For your records, an EFT Trace Number will be provided with each successful payment. The number can be used as a receipt or to trace the payment.

Depositing on time. For deposits made by EFTPS to be on time, you must submit the deposit by 8 p.m. Eastern time the day before the date the deposit is due. If you use a third party to make deposits on your behalf, they may have different cutoff times.

Same-day wire payment option. If you fail to submit a deposit transaction on EFTPS by 8 p.m. Eastern time the day before the date a deposit is due, you can still make your deposit on time by using the Federal Tax Collection Service (FTCS) to make a same-day wire payment. To use the same-day wire payment method, you'll need to make arrangements with your financial institution ahead of time. Please check with your financial institution regarding availability, deadlines, and costs. Your financial institution may charge you a fee for payments made this way. To learn more about the information you'll need to give your financial institution to make a same-day wire payment, go to *IRS.gov/SameDayWire*.

How to claim credit for overpayments. If you deposited more than the right amount of taxes for a tax period, you can choose on Form 941-SS, 941, 944, or 943 for that tax period to have the overpayment refunded or applied as a credit to your next return. Don't ask EFTPS to request a refund from the IRS for you.

Deposit Penalties

Penalties may apply if you don't make required deposits on time or if you make deposits of less than the required amount. The penalties don't apply if any failure to make a proper and timely deposit was due to reasonable cause and not to willful neglect. If you receive a penalty notice, you can provide an explanation of why you believe reasonable cause exists.

If you timely filed your employment tax return, the IRS may also waive deposit penalties if you inadvertently failed to deposit and it was the first quarter that you were required to deposit any employment tax, or if you inadvertently failed to deposit the first time after your deposit frequency changed. You must also meet the net worth and size limitations applicable to awards of administrative and litigation costs under section 7430; for individuals, this means that your net worth can't exceed $2 million, and for businesses, your net worth can't exceed $7 million and you also can't have more than 500 employees.

The IRS also may waive the deposit penalty the first time you're required to make a deposit if you inadvertently send the payment to the IRS rather than deposit it by EFT.

For amounts not properly or timely deposited, the penalty rates are as follows.

2% - Deposits made 1 to 5 days late.

5% - Deposits made 6 to 15 days late.

10% - Deposits made 16 or more days late, but before 10 days from the date of the first notice that the IRS sent asking for the tax due.

10% - Amounts that should've been deposited, but instead were paid directly to the IRS or paid with your tax return (but see *Payment with Return*, earlier in this section, for exceptions).

15% - Amounts still unpaid more than 10 days after the date of the first notice that the IRS sent asking for the tax due or the day on which you received notice and demand for immediate payment, whichever is earlier.

Late deposit penalty amounts are determined using calendar days, starting from the due date of the liability.

Special rule for former Form 944 filers. If you filed Form 944 for the prior year and must file Forms 941-SS for the current year because your employment tax liability for the prior year exceeded the Form 944 eligibility requirement ($1,000 or less), the FTD penalty won't apply to a late deposit of employment taxes for January of the current year if the taxes are deposited in full by March 15 of the current year.

Order in which deposits are applied. Deposits generally are applied to the most recent tax liability within the return period (quarter or year). However, if you receive an FTD penalty notice, you may designate how your payment is to be applied in order to minimize the amount of the penalty, if you do so within 90 days of the date of the notice. Follow the instructions on the penalty notice that you received. For more information on designating deposits, see Revenue Procedure 2001-58. You can find Revenue Procedure 2001-58 on page 579 of Internal Revenue Bulletin 2001-50 at *IRS.gov/pub/irs-irbs/irb01-50.pdf*.

Example. Cedar, Inc. is required to make a deposit of $1,000 on May 15 and $1,500 on June 15. It doesn't make the deposit on May 15. On June 15, Cedar, Inc. deposits $2,000. Under the deposits rule, which applies deposits to the most recent tax liability, $1,500 of the deposit is applied to the June 15 deposit and the remaining $500 is applied to the May deposit. Accordingly, $500 of the May 15 liability remains undeposited. The penalty on this underdeposit will apply as explained earlier.

Trust fund recovery penalty. If federal income, social security, or Medicare taxes that must be withheld (that is, trust fund taxes) aren't withheld or aren't deposited or paid to the United States Treasury, the trust fund recovery penalty may apply. The penalty is 100% of the unpaid trust fund tax. If these unpaid taxes can't be immediately collected from the employer or business, the trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, or paying over these taxes, and who acted willfully in not doing so.

A **responsible person** can be an officer or employee of a corporation, a partner or employee of a partnership, an accountant, a volunteer director/trustee, or an employee of a sole proprietorship, or any other person or

DRAFT AS OF November 21, 2019

entity that is responsible for collecting, accounting for, or paying over trust fund taxes. A responsible person also may include one who signs checks for the business or otherwise has authority to cause the spending of business funds.

Willfully means voluntarily, consciously, and intentionally. A responsible person acts willfully if the person knows the required actions of collecting, accounting for, or paying over trust fund taxes aren't taking place, or recklessly disregards obvious and known risks to the government's right to receive trust fund taxes.

DRAFT AS OF November 21, 2019

"Averaged" FTD penalty. The IRS may assess an "averaged" FTD penalty of 2% to 10% if you're a monthly schedule depositor and didn't properly complete Form 941-SS, line 16, when your tax liability shown on Form 941-SS, line 12, was $2,500 or more. IRS may also assess this penalty of 2% to 10% if you're a semiweekly schedule depositor and your tax liability shown on Form 941-SS, line 12, was $2,500 or more and you did any of the following.

- Completed Form 941-SS, line 16, instead of Schedule B (Form 941).
- Failed to attach a properly completed Schedule B (Form 941).
- Completed Schedule B (Form 941) incorrectly, for example, by entering tax deposits instead of tax liabilities in the numbered spaces.

The IRS figures the penalty by allocating your total tax liability shown on Form 941-SS, line 12, equally throughout the tax period. Then we apply your deposits and payments to the averaged liabilities in the date order we received your deposits. We figure the penalty on any tax not deposited, deposited late, or not deposited in the correct amounts. Your deposits and payments may not be counted as timely because IRS doesn't know the actual dates of your tax liabilities.

You can avoid the penalty by reviewing your return before filing it. Follow these steps before filing your Form 941-SS.

- If you're a monthly schedule depositor, report your tax liabilities (not your deposits) in the monthly entry spaces on Form 941-SS, line 16.
- If you're a semiweekly schedule depositor, report your tax liabilities (not your deposits) on Schedule B (Form 941) in the lines that represent the dates you paid your employees.
- Verify that your total liability shown on Form 941-SS, line 16, or the bottom of Schedule B (Form 941) equals your tax liability shown on Form 941-SS, line 12.
- Don't show negative amounts on Form 941-SS, line 16, or Schedule B (Form 941).
- For prior period errors, don't adjust your tax liabilities reported on your current Form 941-SS, line 16, or on Schedule B (Form 941). Instead, file an adjusted return (Form 941-X (if you're adjusting a previously filed Form 941-SS) or Form 944-X (if you're adjusting a previously filed Form 944)) if you're also adjusting your tax liability. If you're only adjusting your deposits in response to an FTD penalty notice, see the Instructions for Schedule B (Form 941) (if you previously filed Form 941-SS) or the Instructions for Form 944-X (if you previously filed Form 944).

CAUTION *If you filed Form 944 for 2019 and line 9 was $2,500 or more, you were required to complete Form 944, lines 13a–13m, or attach Form 945-A. If you failed to complete lines 13a–13m, or failed to attach Form 945-A, whichever was required, IRS may assess an "averaged" FTD penalty.*

CAUTION *In addition to civil penalties, you may be subject to criminal prosecution (brought to trial) for willfully:*

- *Evading tax;*
- *Failing to collect or truthfully account for and pay over tax;*
- *Failing to file a return, supply information, or pay any tax due;*
- *Furnishing a false or fraudulent Form W-2 to employees or failing to furnish Form W-2;*
- *Committing fraud and providing false statements;*
- *Preparing and filing a fraudulent return; or*
- *Committing identity theft.*

9. Employer's Returns

General instructions. File Forms 941-SS (or Form 944) for nonfarm workers and Form 943 for farmworkers. (U.S. Virgin Islands employers may be required to file Form 940 for the combined wages of nonfarm workers and farmworkers.)

Employers with employees subject to U.S. income tax withholding. If you have both employees who are subject to U.S. income tax withholding and employees who aren't subject to U.S. income tax withholding, you must file only Form 941 (or Form 944) and include all your employees' wages on that form.

Nonfarm employers. File Form 941-SS for the calendar quarter in which you first pay wages for nonfarm workers and for each quarter thereafter unless you're a seasonal employer or file a final return. Due dates for each quarter of the calendar year are as follows.

Quarter	Due
Jan., Feb., Mar.	Apr. 30
Apr., May, June	July 31
July, Aug., Sept.	Oct. 31
Oct., Nov., Dec.	Jan. 31

However, if you deposited all taxes when due for the quarter, you may file Form 941-SS by May 10, August 10, November 10, and February 10, respectively. If the due date for filing your return falls on a Saturday, Sunday, or legal holiday, you may file on the next business day.

If you closed your business or stopped paying wages and don't have to file returns in the future, check the box on line 17 of your final Form 941-SS and show the date final wages were paid.

DRAFT AS OF November 21, 2019

Form 944. If the IRS notified you to file Form 944, file your 2019 Form 944 by January 31, 2020, or by February 10, 2020 (if you deposited all taxes when due).

Household employers reporting social security and Medicare taxes. If you're a sole proprietor and file Forms 941-SS (or Form 944) for business employees, you may include taxes for household employees on your Forms 941-SS (or Form 944). Otherwise, report social security and Medicare taxes for household employees on Schedule H (Form 1040 or 1040-SR). See Pub. 926 for more information.

Employers of farmworkers. Every employer of farmworkers must file a Form 943 for each calendar year beginning with the first year the employer pays $2,500 or more for farmwork or employs a farmworker who meets the $150 test described in section 6.

File a Form 943 each year for all taxable wages paid for farmwork. You may report household workers in a private home on a farm operated for profit on Form 943. Don't report wages for farmworkers on Form 941-SS or Form 944.

Send Form 943 to the IRS by January 31, 2020. Send it with payment of any taxes due that you're not required to deposit. If you deposited all taxes when due, you may file Form 943 by February 10, 2020.

Penalties. For each whole or part month that a return isn't filed when required, there is a failure-to-file (FTF) penalty of 5% of the unpaid tax due with that return. The maximum penalty generally is 25% of the tax due. Also, for each whole or part month that the tax is paid late, there is a failure-to-pay (FTP) penalty of 0.5% per month of the amount of tax. For individual filers only, the FTP penalty is reduced from 0.5% per month to 0.25% per month if an installment agreement is in effect. You must have filed your return on or before the due date of the return to qualify for the reduced penalty. The maximum amount of the FTP penalty is also 25% of the tax due. If both penalties apply in any month, the FTF penalty is reduced by the amount of the FTP penalty. The penalties won't be charged if you have a reasonable cause for failing to file or pay. If you receive a penalty notice, you can provide an explanation of why you believe reasonable cause exists.

Reporting Adjustments to Form 941-SS, 944, or 943

Current Period Adjustments

Make current period adjustments for fractions of cents, sick pay, tips, and group-term life insurance on your Form 941-SS, 944, or 943. See the Instructions for Form 941-SS, Instructions for Form 944, or Instructions for Form 943 for information on how to report these adjustments.

Prior Period Adjustments

Forms for prior period adjustments. Use Form 941-X or Form 944-X to make a correction after you discover an error on a previously filed Form 941 or Form 944. There are also Forms 943-X, 945-X, and CT-1X to report corrections on the corresponding returns. Form 941-X and Form 944-X also replace Form 843 for employers to request a refund or abatement of overreported employment taxes. Continue to use Form 843 when requesting a refund or abatement of assessed interest or penalties.

TIP *See Revenue Ruling 2009-39, 2009-52 I.R.B. 951, for examples of how the interest-free adjustment and claim for refund rules apply in 10 different situations. You can find Revenue Ruling 2009-39 at IRS.gov/irb/2009-52_IRB#RR-2009-39.*

Background. Treasury Decision 9405 changed the process for making interest-free adjustments to employment taxes reported on Forms 941-SS, 943, 944-SS, and 944, and for filing a claim for refund of employment taxes. Treasury Decision 9405, 2008-32 I.R.B. 293, is available at IRS.gov/irb/2008-32_IRB#TD-9405. You'll use the adjustment process if you underreported employment taxes and are making a payment, or if you overreported employment taxes and will be applying the credit to the Form 941-SS, 943, or 944 period during which you file Forms 941-X, 943-X, or 944-X, respectively. You'll use the claim process if you overreported employment taxes and are requesting a refund or abatement of the overreported amount. We use the terms "correct" and "corrections" to include interest-free adjustments under sections 6205 and 6413, and claims for refund and abatement under sections 6402, 6414, and 6404 of the Internal Revenue Code.

Correcting employment taxes. When you discover an error on a previously filed Form 941-SS, 943, or 944, you must:

- Correct that error using Form 941-X, Form 943-X, or Form 944-X;
- File a separate Form 941-X, Form 943-X, or Form 944-X for each Form 941-SS, 943, or 944 you're correcting; and
- File Form 941-X, Form 943-X, or Form 944-X separately. Don't file with Form 941-SS, 943, or 944.

If you're correcting underreported tax, you must file Form 941-X or Form 944-X by the due date of the return

for the return period in which you discovered the error and pay the amount you owe by the time you file. Doing so generally will ensure that your correction is interest free and not subject to FTP or FTD penalties.

Report current period adjustments for fractions of cents, third-party sick pay, tips, and group-term life insurance on Form 941-SS, lines 7–9; Form 943, line 10; or Form 944, line 6. Report the correction of underreported and overreported amounts for the same tax period on a single Form 941-X, Form 943-X, or Form 944-X unless you're requesting a refund. If you're requesting a refund and are correcting both underreported and overreported amounts, file one Form 941-X, Form 943-X, or Form 944-X correcting the underreported amounts only and a second Form 941-X, Form 943-X, or Form 944-X correcting the overreported amounts.

See the chart on the back of Form 941-X, Form 943-X, or Form 944-X for help in choosing whether to use the adjustment process or the claim process. See the Instructions for Form 941-X, Instructions for Form 943-X, or Instructions for Form 944-X for details on how to make the adjustment or claim for refund or abatement.

TIP *You can't adjust amounts reported as Additional Medicare Tax withheld in a prior calendar year unless it is to correct an administrative error or section 3509 applies. An administrative error occurs if the amount you entered on Form 941-SS, Form 944, or Form 943 isn't the amount that you actually withheld. Examples include mathematical or transposition errors. If a prior-year error was a nonadministrative error, you may correct only the* ***wages and tips*** *subject to Additional Medicare Tax withholding.*

Exceptions to interest-free corrections of employment taxes. A correction won't be eligible for interest-free treatment if:

- The failure to report relates to an issue raised in an IRS examination of a prior return, or
- The employer knowingly underreported its employment tax liability.

A correction won't be eligible for interest-free treatment after the earlier of the following:

- Receipt of an IRS notice and demand for payment after assessment, or
- Receipt of an IRS notice of determination under Internal Revenue Code section 7436.

Collecting underwithheld taxes from employees. If you withhold no social security tax, Medicare tax, or less than the correct amount of either tax from an employee's wages, you can make it up by withholding from later pay to that employee. But you're the one who owes the underpayment. Reimbursement is a matter for settlement between you and the employee. Underwithheld Additional Medicare Tax must be recovered from the employee on or before the last day of the calendar year. See section 5 for special rules for tax on tips.

Refunding amounts incorrectly withheld from employees. If you withheld more than the correct amount of social security tax or Medicare tax from wages paid, and discover the error before filing Form 941-SS, 944, or 943, repay or reimburse the employee the amount overwithheld before filing the return.

Note. An employer reimburses an employee by applying the overwithheld amount against taxes to be withheld on future wages.

Be sure to keep in your records the employee's written receipt showing the date and amount of the repayment or record of reimbursement. You must report and pay any taxes overwithheld when you file the return for the return period in which the overcollection was made if you haven't repaid or reimbursed the employee.

For an overcollection reported on a previously filed Form 941-SS, 944, or 943, an employer is required to repay or reimburse its employees prior to filing an adjusted employment tax return. Any excess Additional Medicare Tax withholding must be repaid or reimbursed to the employee before the end of the calendar year in which it was withheld.

Employers filing claims for refund of overpaid social security and Medicare taxes may either repay or reimburse the employees their share of social security tax and Medicare tax first or get employee consents to file the claim for the excess tax on their behalf. Employers must retain the written receipt of the employee showing the date and amount of the repayment, record of reimbursement, or the written consent of the employee. You can't use a claim for refund to correct Additional Medicare Tax withholding errors.

10. Wage and Tax Statements

By January 31, 2020, furnish Copies B and C of 2019 Form W-2AS, W-2CM, W-2GU, or W-2VI to each employee. If an employee stops working for you during the year, furnish the statement at any time after employment ends but no later than January 31 of the next year. However, if the employee asks you for Form W-2, furnish it within 30 days of the request or the last wage payment, whichever is later.

If you go out of business during the year, give your employees their Forms W-2 by the due date of your final Form 941-SS. File Copy A with the SSA by the last day of the month after that due date.

If an employee loses or destroys his or her copies, furnish that employee copies of Form W-2AS, W-2CM, W-2GU, or W-2VI marked "REISSUED STATEMENT." Don't send Copy A of the reissued form to the SSA.

TIP *Employers in the Commonwealth of the Northern Mariana Islands should contact their local tax department for instructions on completing Form W-2CM. You can get Form W-2CM and its instructions by going to cnmidof.net/rev/forms.asp, or by calling 670-664-1000.*

DRAFT AS OF November 21, 2019

When and where to file electronically. If you're required to file 250 or more Forms W-2AS, W-2CM, W-2GU, or W-2VI in calendar year 2020, you must file electronically. See the General Instructions for Forms W-2 and W-3 or call the SSA at 800-772-6270 for more information. You may also visit Social Security's Employer W-2 Filing Instructions & Information website at *SSA.gov/employer* to electronically file your Forms W-2. File your 2019 wage and tax statements electronically by January 31, 2020.

If you experience problems filing electronically, contact the SSA at 800-772-6270. To speak with the SSA's Employer Services Liaison Officer for your region, call 212-264-3865 for the U.S. Virgin Islands or 510-970-8247 for Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. You may also visit the SSA's Regional Employer Services Liaison Officers website at *SSA.gov/employer/wage_reporting_specialists.htm*.

DRAFT AS OF November 21, 2019

Waiver. You may request a waiver from filing electronically on Form 8508. You must submit Form 8508 to the IRS at least 45 days before the due date of Form W-2AS, W-2CM, W-2GU, or W-2VI. See the Form 8508 instructions for more information.

When and where to file 2019 paper forms. By January 31, 2020 (or when filing a final return if you make final payments before the end of the year), send your completed forms to the following locations.

- Employers in American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands must send Copy A of Forms W-2AS, W-2CM, W-2GU, W-2VI, and a Form W-3SS to the SSA at the address shown on Form W-3SS.
- Send Copy 1 of Forms W-2AS, W-2CM, W-2GU, W-2VI, and Form W-3SS to your local tax department. For more information on Copy 1, contact your local tax department. Employers in the Commonwealth of the Northern Mariana Islands should contact their local tax department for instructions on how to file Copy 1.

If you need copies of Forms W-2AS, W-2CM, W-2GU, W-2VI, and Form W-3SS, see *How To Get Tax Help*, later.

Correcting Forms W-2AS, W-2CM, W-2GU, W-2VI, and Form W-3SS. If you need to correct a Form W-2AS, W-2CM, W-2GU, or Form W-2VI after you've sent Copy A to the SSA, use Form W-2c. Furnish employees Copies B and C of Form W-2c. Send Copy A with Form W-3c, Transmittal of Corrected Wage and Tax Statements, to the SSA at the address shown on Form W-3c. For more information, see the General Instructions for Forms W-2 and W-3.

If a form is corrected before you send Copy A to the SSA, furnish the employee the corrected copies. Mark the original Copy A "Void" in the proper box and send the new Copy A as explained above. Only send the new Copy A to the SSA; don't send the Copy A marked "Void." If you're required to file 250 or more Forms W-2c in calendar year 2020, you must file them electronically unless the IRS grants you a waiver. For more information, see the General Instructions for Forms W-2 and W-3.

11. Federal Unemployment (FUTA) Tax—U.S. Virgin Islands Employers Only

The Federal Unemployment Tax Act, with state unemployment systems, provides for payments of unemployment compensation to workers who have lost their jobs. Most employers pay both a federal and a state unemployment tax. Only the employer pays FUTA tax; it isn't withheld from your employees' wages. For more information, see the Instructions for Form 940.

You must file Form 940 if you're subject to federal unemployment (FUTA) tax under the following rules.

In general. You're subject to FUTA tax in 2020 on the wages you pay employees who aren't farmworkers or household workers if:

1. You paid wages of $1,500 or more in any calendar quarter of 2019 or 2020, or
2. You had one or more employees for at least some part of a day in any 20 or more different weeks in 2019 or 20 or more different weeks in 2020.

Household workers. You're subject to FUTA tax only if you paid total cash wages of $1,000 or more (for all household workers) in any calendar quarter in 2019 or 2020.

Farmworkers. You're subject to FUTA tax on the wages that you pay to farmworkers in 2020 if:

- You paid total cash wages of $20,000 or more for the farmwork in any calendar quarter to farmworkers during 2019 or 2020, or
- 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 2019 or 20 or more different weeks in 2020.

To determine whether you meet either test above, you must count wages paid to aliens admitted on a temporary basis to the United States to perform farmwork, also known as "H-2A" visa workers. However, wages paid to "H-2A" visa workers aren't subject to FUTA tax.

In most cases, farmworkers supplied by a crew leader are considered employees of the farm operator for FUTA tax purposes. However, this isn't the case if either of the following applies and the crew leader isn't an employee of the farm operator.

1. The crew leader is registered under the Migrant and Seasonal Agricultural Worker Protection Act.
2. Substantially all of the workers supplied by the crew leader operate or maintain tractors, harvesting or

cropdusting machines, or other machines provided by the crew leader.

If (1) or (2) applies, the farmworkers generally are employees of the crew leader.

Computing FUTA tax rate. For 2020, the FUTA tax rate is 6.0%. The tax applies to the first $7,000 you pay to each employee as wages during the year. The $7,000 is the federal wage base. Your wage base in the U.S. Virgin Islands may be different.

Generally, you can take a credit against your FUTA tax for amounts you paid into U.S. Virgin Islands unemployment funds. The credit may be as much as 5.4% of wages subject to FUTA tax. If you're entitled to the maximum 5.4% credit, the FUTA tax rate after the credit is 0.6%. You're entitled to the maximum credit if you paid your U.S. Virgin Islands unemployment taxes in full, on time, and on all the same wages as are subject to FUTA tax, and as long as the U.S. Virgin Islands isn't determined to be a credit reduction state. See the Instructions for Form 940 to determine the credit.

The U.S. Virgin Islands may exclude some types of wages from its unemployment insurance tax, even though they're subject to FUTA tax. In such a case, you may be required to deposit more than 0.6% FUTA tax on those wages. Contact the U.S. Virgin Islands Department of Labor for information on wages subject to the U.S. Virgin Islands unemployment insurance tax. See the Instructions for Form 940 for further guidance.

In years when the U.S. Virgin Islands is determined to be a credit reduction state, you must include liabilities owed for credit reduction with your fourth quarter deposit. You may deposit the anticipated extra liability throughout the year, but it isn't due until the due date for the deposit for the fourth quarter, and the associated liability should be recorded as being incurred in the fourth quarter. See the Instructions for Form 940 for more information.

Form 940. By January 31, 2020, file your 2019 Form 940. If you made all FUTA tax deposits on time, you may file Form 940 by February 10, 2020.

Deposits. For deposit purposes, figure FUTA tax quarterly. Determine your FUTA tax liability by multiplying the amount of taxable wages paid during the quarter by 0.6%. Stop depositing FUTA tax on an employee's wages when he or she reaches $7,000 in taxable wages for the calendar year. If your FUTA tax liability for any calendar quarter is $500 or less, you don't have to deposit the tax. Instead, you may carry it forward and add it to the liability figured in the next quarter to see if you must make a deposit. If your FUTA tax liability for any calendar quarter is over $500 (including any FUTA tax carried forward from an earlier quarter), you must deposit the tax by EFT. See section 8 for more information on deposits.

DRAFT AS OF November 25, 2019

12. Special Rules for Various Types of Employment and Payments

DRAFT AS OF November 21, 2019

The following table summarizes the treatment of special classes of employment and special types of payments. Employers who need more detailed information should consult their IRS representative or see the Employment Tax Regulations.

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes: Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)	Treatment Under Employment Taxes: FUTA (U.S. Virgin Islands Only)
Agricultural labor:		
1. Service on farm in connection with cultivating soil; raising or harvesting any agricultural or horticultural commodity; the care of livestock, poultry, bees, fur-bearing animals, or wildlife.	Taxable if $150 test or $2,500 test in section 6 is met.	Taxable if either test in section 11 is met.
2. Service in employ of owner or operator of farm if major part of the services are performed on farm, in management or maintenance, etc., of farm, tools, or equipment, or in salvaging timber, or clearing brush and other debris left by hurricane.	Taxable if $150 test or $2,500 test in section 6 is met.	Taxable if either test in section 11 is met.
3. In connection with the production and harvesting of turpentine and other oleoresinous products.	Taxable if $150 test or $2,500 test in section 6 is met.	Taxable if either test in section 11 is met.
4. Cotton ginning.	Taxable if $150 test or $2,500 test in section 6 is met.	Taxable if either test in section 11 is met.
5. In connection with hatching of poultry.	Taxable (not farmwork if performed off farm).*	Taxable if either test in section 11 is met.
6. In operation or maintenance of ditches, canals, reservoirs, or waterways used only for supplying or storing water for farming purposes and not owned or operated for profit.	Taxable if $150 test or $2,500 test in section 6 is met.	Taxable if either test in section 11 is met.
7. In processing, packaging, delivering, etc., any agricultural or horticultural commodity in its unmanufactured state:		
a. In employ of farm operator.	If operator produced over half of commodity processed, taxable if $150 test or $2,500 test in section 6 is met; otherwise taxable (not farmwork).*	If employer produced over half of commodity processed, taxable if either test in section 11 is met; otherwise taxable (not farmwork).
b. In employ of unincorporated group of farm operators (never more than 20).	If group produced all commodity processed, taxable if $150 test or $2,500 test in section 6 is met; otherwise taxable (not farmwork).*	If employer produced over half of commodity processed, taxable if either test in section 11 is met; otherwise taxable (not farmwork).
c. In employ of other groups of farm operators (including cooperative organizations and commercial handlers).	Taxable (not farmwork).*	If employer produced over half of commodity processed, taxable if either test in section 11 is met; otherwise taxable (not farmwork).
8. Handling or processing commodities after delivery to terminal market for commercial canning or freezing.	Taxable (not farmwork).*	Taxable (not farmwork).
Aliens:		
1. Resident		
a. Service performed in U.S.**	Same as U.S. citizen; exempt if any part of service as crew member of foreign vessel or aircraft is performed outside U.S.	Same as U.S. citizen.
b. Service performed outside U.S.**	Taxable if: (a) working for an American employer, or (b) an American employer by agreement with the IRS covers U.S. citizens and residents employed by its foreign affiliates, or subsidiary of an American employer.	Exempt unless on or in connection with an American vessel or aircraft and either performed under contract made in U.S. or alien is employed on such vessel or aircraft when it touches U.S. port.
2. Nonresidents working in U.S.***		
a. Workers lawfully admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act on a temporary basis to perform agricultural labor ("H-2A" workers).	Exempt.	Exempt.

** Wages for services not considered farmwork are reported on Forms 941-SS or 944. Other exemptions may apply. See section 4 and section 9.*
*** Benefits provided under cafeteria plans may qualify for exclusion from wages for social security, Medicare, and FUTA taxes.*
****U.S. includes U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.*

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes	
	Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)	**FUTA (U.S. Virgin Islands Only)**
Aliens (continued):		
b. Student, scholar, trainee, teacher, etc. as nonimmigrant alien under section 101(a)(15)(F), (J), (M), or (Q).	Exempt if service is performed for purposes specified in section 101(a)(15)(F), (H), (J), (M), or (Q) of the Immigration and Nationality Act. However, these taxes may apply if the employee becomes a resident alien.	
c. Philippine resident admitted to Guam or CNMI under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.	Exempt if service is performed for purposes specified in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act. However, these taxes may apply if the employee becomes a resident alien.	
d. Philippine resident not admitted to CNMI under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act for services performed in the CNMI on or after January 1, 2015.	Taxable.	Exempt.
e. Korean resident admitted to Guam under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.	Exempt if service is performed for purposes specified in section 101(a)(15)(H)(ii) of the Immigration and Nationality Act. However, these taxes may apply if the employee becomes a resident alien.	Exempt.
f. Korean resident admitted to CNMI under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act.	Taxable.	Exempt.
g. All other nonresidents working in U.S. ***	Same as U.S. citizen; exempt if any part of service as crew member of foreign vessel or aircraft is performed outside U.S. and employer isn't an American employer.	Same as U.S. citizen.
3. Nonresident working on American vessel or aircraft outside U.S.***	Taxable if under contract made in U.S. or worker is employed on vessel or aircraft when it touches U.S. port.	
Deceased worker's wages:		
1. Paid to beneficiary or estate in calendar year of worker's death.	Taxable.	Taxable.
2. Paid to beneficiary or estate after the year of worker's death.	Exempt.	Exempt.
Dependent care assistance programs (limited to $5,000; $2,500 if married filing separately).	Exempt to the extent that it is reasonable to believe that amounts will be excludable from gross income under Internal Revenue Code (IRC) section 129.	
Disabled worker's wages paid after the year in which worker became entitled to disability insurance benefits under the Social Security Act.	Exempt if worker didn't perform any service for employer during period for which payment is made.	Taxable.
Domestic service in college clubs, fraternities, and sororities.	Exempt if paid to regular student; also exempt if employee is paid less than $100 in a year by an income-tax-exempt employer.	Taxable if employer paid total cash wages of $1,000 or more (for all household employees) in any calendar quarter in the current or preceding year.
Family employees:		
1. Child employed by parent (or by partnership in which each partner is a parent of the child).	Exempt until age 18.	Exempt until age 21.
2. Child employed by parent for domestic work or not in the course of a trade or business.	Exempt until age 21.	Exempt until age 21.
3. Parent employed by child.	Taxable if in course of the child's business. For household work in private home of child, see Pub. 926.	Exempt.
4. Spouse employed by spouse.	Taxable if in course of spouse's business.	Exempt.
Federal employees:		
1. Members of uniformed services; Young Adult Conservation Corps, Job Corps, or National Volunteer Antipoverty Program; Peace Corps volunteers and volunteer leaders.	Taxable.	Exempt.
2. All others.	Taxable if employee is covered by FERS or has a break in service of more than 1 year (unless the break in service was for temporary military or reserve duty). Others generally subject to Medicare tax.	Exempt unless worker is a seaman performing services on or in connection with American vessel owned by or chartered to the United States and operated by general agent of Secretary of Commerce.

****U.S. includes U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.*

DRAFT AS OF November 21, 2019

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes	
	Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)	**FUTA (U.S. Virgin Islands Only)**
Fishing and related activities, employment in connection with catching, harvesting, farming, etc.:		
1. Salmon or halibut.	Taxable unless 3 applies.	Taxable unless 3 applies.
2. Other fish and other aquatic forms of animal and vegetable life.	Taxable unless 3 applies.	Exempt unless on vessel of more than 10 net tons and 3 doesn't apply.
3. An arrangement with the owner or operator of the boat by which the individual receives a share of the boat's catch (or proceeds from the sale of the catch), the share depending on the boat's catch, and operating crew of the boat is normally fewer than 10 individuals.*	Exempt if any cash remuneration is: (a) $100 or less, (b) contingent on minimum catch, and (c) paid solely for additional duties (such as mate, engineer, or cook for which cash remuneration is traditional).	
Foreign governments and international organizations.	Exempt.	Exempt.
Foreign service by U.S. citizens:		
1. As U.S. Government employee.	Same as within U.S.	Exempt. See also *Federal employees*, earlier.
2. For foreign affiliates or subsidiaries of American employers and other private employers.	Exempt unless (a) an American employer by agreement with the IRS covers U.S. citizens employed by its foreign affiliates or subsidiaries, or (b) U.S. citizen works for American employer.	Exempt unless (a) on American vessel or aircraft and work is performed under contract made in U.S. or worker is employed on vessel when it touches U.S. port, or (b) U.S. citizen works for American employer (except in a contiguous country with which the U.S. has an agreement for unemployment compensation) or in the U.S. Virgin Islands.
Fringe benefits.	Taxable on excess of fair market value of the benefit over the sum of an amount paid for it by the employee and any amount excludable by law. However, optional special valuation rules may apply.** See Pub.15-B for details.	
Group-term life insurance costs. See Pub.15-B for details.	Exempt, except for the cost of premiums that provide more than $50,000 coverage.	Exempt.
Homeworkers (industrial, cottage-industry):		
1. Common law employees.	Taxable.	Taxable.
2. Statutory employees. See section 2.	Taxable if paid $100 or more in cash in a year.	Exempt.
Hospital employees:		
1. Interns.	Taxable.	Exempt.
2. Patients.	Taxable (Exempt for state or local government hospitals.)	Exempt.
Household workers (domestic service in private homes). Also see *Domestic service in college clubs, fraternities, and sororities*, earlier.	Taxable if paid $2,200 or more in cash in 2020. Exempt if performed by an individual who is under age 18 during any part of the calendar year and the work isn't the principal occupation of the employee.	Taxable if employee paid total cash wages of $1,000 or more (for all household employees) in any calendar quarter in the current or preceding year.
Insurance agents or solicitors:		
1. Full-time life insurance salesperson.	Taxable.	Taxable if employee under common law and not paid solely by commissions (applies to both 1 and 2).
2. Other salesperson of life, casualty, etc., insurance.	Taxable only if employee under common law.	
Interest foregone on below-market loans related to compensation and deemed original issue discount. See IRC section 7872 and its regulations for details.	See Pub.15-A.	
Ministers of churches performing duties as such.	Exempt.	Exempt.

** Income derived by Native Americans exercising fishing rights generally is exempt from employment taxes.*
*** Benefits provided under cafeteria plans may qualify for exclusion from wages for social security, Medicare, and FUTA taxes.*

DRAFT AS OF November 21, 2019

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes	
	Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)	FUTA (U.S. Virgin Islands Only)
Newspaper carrier under age 18 delivering directly to readers.	Exempt.	Exempt.
Newspaper and magazine vendors buying at fixed prices and retaining excess from sales to customers.	Exempt.	Exempt.
Noncash payments:		
1. For household work, agricultural labor, and service not in the course of the employer's trade or business.	Exempt.	Exempt.
2. To certain retail commission salespersons ordinarily paid solely on a cash commission basis.	Taxable.	Taxable.
Nonprofit organizations:		
1. Religious, educational, charitable, etc., organizations described in IRC section 501(c)(3) exempt from income tax under IRC section 501(a).	Taxable if paid $100 or more in a year. (See Form 8274, Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption From Employer Social Security and Medicare Taxes, for election out of social security and Medicare coverage for certain churches and church-controlled organizations.)	Exempt.
2. Corporations organized under Act of Congress described in IRC section 501(c).	Taxable if employee is paid $100 or more in a year unless services excepted by IRC section 3121(b)(5) or (6).	Taxable if employee is paid $50 or more in a quarter unless services excepted by IRC section 3306(c)(6).
3. Other organizations exempt under IRC section 501(a) (other than a pension, profit-sharing, or stock bonus plan described in IRC section 401(a)) or under IRC section 521.	Taxable if employee is paid $100 or more in a year.	Taxable if employee is paid $50 or more in a quarter.
Partners: Bona fide members of a partnership.	Exempt.	Exempt.
Religious orders: Members who are instructed by the order to perform services:		
1. For the order, agency of the supervising church, or associated institution.	Exempt unless member has taken a vow of poverty and the religious order or its autonomous subdivision irrevocably elects coverage for entire active membership.	Exempt.
2. For any organization other than those described in 1 above.	Taxable.	Taxable.
Retirement and pension plans:	See Pub.15-A for details and information on employer contributions to nonqualified deferred compensation arrangements.	
1. Employer contributions to a qualified plan.	Exempt.	Exempt.
2. Elective employee contributions and deferrals to a plan containing a qualified cash or deferred compensation arrangement (for example, 401(k)).	Taxable.	Taxable.
3. Employee salary reduction contributions to a SIMPLE retirement account.	Taxable.	Taxable.
4. Employer contributions to individual retirement accounts under a simplified employee pension (SEP) plan.	Exempt except for amounts contributed under a salary reduction SEP agreement.	
5. Employer contributions to IRC section 403(b) annuity contracts.	Taxable if paid through a salary reduction agreement (written or otherwise).	
6. Distributions from qualified retirement and pension plans and section 403(b) annuities.	Exempt.	Exempt.
Salespersons:		
1. Common law employees.	Taxable.	Taxable.
2. Statutory employees (referred to in section 2).	Taxable.	Taxable except for full-time life insurance sales agents.
3. Statutory nonemployees (qualified real estate agents and direct sellers).	Exempt. Treated as self-employed individuals if substantially all payments directly related to sales or other output and services performed as nonemployees specified in written contract. Direct sellers must be in the business of selling consumer products other than in a permanent retail place of business.	

DRAFT AS OF November 21, 2019

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes	
	Social Security and Medicare (including Additional Medicare Tax when wages are paid in excess of $200,000)	**FUTA (U.S. Virgin Islands Only)**
Scholarships and fellowship grants (includible in income under section 117(c)).	Taxability depends on the nature of the employment and the status of the organization. See *Students* below.	
Severance or dismissal pay.	Taxable.	Taxable.
Service not in the course of the employer's trade or business, other than on a farm operated for profit or for household employment in private homes.	Taxable if employee is paid $100 or more in cash in a year.	Taxable only if employee is paid $50 or more in cash in a quarter and works on 24 or more different days in that quarter or in the preceding quarter.
Sickness or injury payments under:		
1. Worker's compensation law.	Exempt.	Exempt.
2. Certain employer plans.	Exempt after end of 6 calendar months after calendar month employee last worked for employer (applies to both 2 and 3). See Pub.15-A for details.	
3. No employer plan.		
Students:		
1. Student enrolled and regularly attending classes (generally, at least half time or equivalent) while pursuing course of study, performing services for:		
a. Private school, college, or university.	Exempt.	Exempt.
b. Auxiliary nonprofit organization operated for and controlled by school, college, or university.	Exempt unless services are covered by a section 218 (Social Security Act) agreement.	Exempt.
c. Public school, college, or university.	Exempt unless services are covered by a section 218 (Social Security Act) agreement.	Exempt.
2. Full-time student performing service for academic credit, combining academic instruction with work experience as an integral part of the program.	Taxable.	Exempt unless program was established for or on behalf of an employer or group of employers.
3. Student nurse performing part-time services for nominal earnings at hospital as incidental part of training.	Exempt.	Exempt.
4. Student employed by organized camps.	Taxable.	Exempt.
Supplemental unemployment compensation benefits.	Exempt under certain conditions. See Pub.15-A.	Exempt under certain conditions. See Pub.15-A.
Territory government employees (other than federal).	(See IRC section 3121(b)(7)) or visit *SSA.gov*.	
1. U.S. Virgin Islands.	Taxable if covered by Section 218 Agreement with SSA.	Exempt.
2. American Samoa and political subdivisions.	Taxable, unless employee covered by a retirement system.	Exempt.
3. Guam.	Exempt, except for certain temporary and intermittent employees.	Exempt.
4. The Commonwealth of the Northern Mariana Islands and political subdivisions.	Taxable (beginning in the fourth calendar quarter of 2012).	Exempt.
Tips:		
1. If $20 or more in a month.	Taxable.	Taxable for all tips reported in writing to employer.
2. If less than $20 in a month.	Exempt.	Exempt.
Worker's compensation.	Exempt.	Exempt.

DRAFT AS OF November 21, 2019

13. Federal Agency Certifying Requirements of Federal Income Taxes Withheld From U.S. Government Employees and Federal Pension Recipients

DRAFT AS OF November 23, 2019

Special Certifying Requirements for Federal Agencies

This section sets forth the legal authorities requiring federal agencies to certify to the IRS the amount of federal income taxes withheld from amounts paid to U.S. Government employees working in, as well as federal civilian and military pensioners residing in American Samoa, the Commonwealth of the Northern Mariana Islands (CNMI), and Guam. As noted below, these special certifying requirements don't apply to federal agencies who have employees working in Puerto Rico or the U.S. Virgin Islands.

American Samoa

Code sections 931(a), 931 (d), and 7654 provide that the U.S. Government is required to transfer ("cover over") to the Treasury of American Samoa the federal income taxes withheld on amounts paid to military and civilian employees and pensioners who are residents of American Samoa. The effect of these provisions is that the federal government transfers on at least an annual basis the federal income taxes withheld or collected from its employees and pensioners who are residents of American Samoa to the American Samoa Treasury. In order for the federal government to cover over these income taxes as required by law, federal agencies must certify the amount of federal income taxes withheld or collected from its employees and pensioners by following the procedures discussed under *Certification Procedures*, later in this section.

Commonwealth of Northern Mariana Islands

Code section 7654 and 48 U.S.C. section 1681 [Public Law 94 241, section 703 (b)] provide that the U.S. Government is required to cover over to the Treasury of the CNMI the federal income taxes withheld on amounts paid to military and civilian employees and pensioners who are residents of the CNMI. The effect of these provisions is that the federal government transfers on at least an annual basis the federal income taxes withheld or collected from its employees and pensioners who are residents of the CNMI to the CNMI Treasury. In order for the federal government to cover over these federal income taxes as required by law, federal agencies must certify the amount of federal income taxes withheld or collected from its employees and pensioners by following the procedures discussed under *Certification Procedures*, later in this section. As discussed in the *Caution* next, federal agencies aren't required to certify the amount of local CNMI taxes that are withheld or collected.

CAUTION *The U.S. Treasury Department and the CNMI Division of Revenue and Taxation entered into an agreement under 5 U.S.C. section 5517 in December 2006. Under this agreement, all federal employers (including the Department of Defense) are required to withhold CNMI income taxes (rather than federal income taxes) and deposit the CNMI taxes with the CNMI Treasury for employees whose regular place of federal employment is in the CNMI. Federal employers are also required to file quarterly and annual reports with the CNMI Division of Revenue and Taxation. The 5517 agreement isn't applicable to payments made to pensioners and compensation paid to members of the U.S. Armed Forces who are stationed in the CNMI but have a state of legal residence outside the CNMI. For more information, including details on completing Form W-2, go to IRS.gov/5517Agreements.*

Guam

Code section 7654 and 48 U.S.C. section 1421(h) provide that the U.S. Government is required to cover over to the Treasury of Guam the federal income taxes withheld on amounts paid to military and civilian employees and pensioners who are residents of Guam. The effect of these provisions is that the federal government transfers on at least an annual basis the federal income taxes withheld or collected from its employees and pensioners who are residents of Guam to the Guam Treasury. In order for the federal government to cover over these federal income taxes as required by law, federal agencies must certify the amount of federal income taxes withheld or collected from its employees, by following the procedures discussed under *Certification Procedures*, later in this section.

Puerto Rico

These special certifying requirements don't apply to federal agencies who have employees working in Puerto Rico.

CAUTION *The U.S. Treasury Department and Puerto Rico entered into an agreement under 5 U.S.C. section 5517 in November 1988. Under this agreement, all federal employers (including the Department of Defense) are required to withhold Puerto Rico income taxes (rather than federal income taxes) and deposit the Puerto Rico taxes with the Puerto Rico Treasury for employees whose regular place of federal employment is in Puerto Rico. Federal employers are also required to file quarterly and annual reports with the Puerto Rico tax department. The 5517 agreement isn't applicable to payments made to pensioners and compensation paid to members of the U.S. Armed Forces who are stationed in Puerto Rico but*

have a state of legal residence outside Puerto Rico. For more information, including details on completing Form W-2, go to IRS/gov/5517Agreements.

U.S. Virgin Islands

These special certifying requirements don't apply to federal agencies who have employees working in the U.S. Virgin Islands.

DRAFT AS OF November 21, 2019

"Federal Income Taxes" From American Samoa, the CNMI, or Guam

This section describes what "federal income taxes" are subject to these certification procedures.

For purposes of these cover over certification requirements, the term "federal income taxes" includes federal income taxes that have been withheld from compensation and other amounts paid to and deposited into the U.S. Treasury on any of the following:

a. Federal government civilian employees who are residents of American Samoa, the CNMI, or Guam.

b. Recipients (including survivors) of federal pensions (civilian or military) who are residents of American Samoa, the CNMI, or Guam.

c. Military personnel stationed in American Samoa, the CNMI, or Guam.

d. Military personnel not stationed in American Samoa, the CNMI, or Guam but who have a state of legal residence in any of these territories.

e. Employees of a service or social organization associated with a military or civilian agency in American Samoa, the CNMI, or Guam.

Certification Procedures

This section contains the procedures federal agencies must follow to certify to the IRS the amount of "federal income taxes" paid to and deposited into the U.S. Treasury. All departments and agencies of the federal government (as well as service and social organizations associated with a military or civilian federal entity) that withhold federal income taxes on amounts paid to employees and pensioners of the United States (or any agency thereof) as provided herein must certify to the IRS each calendar quarter the total amount of federal income taxes withheld that have been deposited into the U.S. Treasury. Federal agencies must submit a separate certification for Federal income taxes creditable to American Samoa, the CNMI, and Guam, as applicable.

Except as provided below, these certifications should be in the form of a letter and should include each of the following:

1. A citation to IRS Pub. 80 as the authority for the certification,
2. Name of the federal certifying agency or department,
3. The certifying agency's EIN,
4. The calendar quarter and fiscal year covered by the certification,
5. The total number of individuals covered by the certification, and
6. The aggregate dollar amount of federal income taxes withheld on all individuals covered by the certification.

A federal government department or agency that submits a certification on behalf of another department or agency must include the name and EIN of each subordinate or designated federal department or agency included, along with the required data for each subordinate or designated department or agency. In this instance, the certifying agency must send the certification at least on an annual basis, no later than February 14.

In addition, federal government agencies certifying for compensation paid to military personnel not stationed in American Samoa, the CNMI, or Guam but who have a state of legal residence in one of these territories must provide each servicemember's name, social security number, amount of annual salary paid, and total amount of annual federal income tax withheld.

The amounts shown in the certification must agree with the amounts of federal income tax withheld and reported on the quarterly federal tax return(s) of the agency (Form 941).

Federal agencies must submit these certifications on a quarterly basis no later than 45 days after the close of each calendar quarter as follows:

Quarter	Due
First quarter (ending March 31)	May 15
Second quarter (ending June 30)	Aug. 14
Third quarter (ending September 30)	Nov. 14
Fourth quarter (ending December 31)	Feb. 14

Federal agencies should mail this certification to the following address:

Internal Revenue Service
Revenue Systems and Analysis
Attn: OS:CFO:FM:RA:S (77K St)
1111 Constitution Avenue, N.W.
CFO/FM - Mail Stop 6167
Washington, DC 20224
Fax: 202-803-9691

How To Get Tax Help

If you have questions about a tax issue, need help preparing your tax return, or want to download free publications, forms, or instructions, go to IRS.gov and find resources that can help you right away.

Preparing and filing your tax return. Go to *IRS.gov/EmploymentEfile* for more information on filing your employment tax returns electronically.

Employers can register to use Business Services Online. The SSA offers online service for fast, free, and secure online Form W-2 filing options to CPAs, accountants, enrolled agents, and individuals who process Forms W-2, Wage and Tax Statement, and Forms W-2c, Corrected Wage and Tax Statement. Employers can go to *SSA.gov/employer* for more information.

Getting answers to your tax questions. On IRS.gov, get answers to your tax questions anytime, anywhere.

- Go to *IRS.gov/Help* for a variety of tools that will help you get answers to some of the most common tax questions.
- Go to *IRS.gov/Forms* to search for our forms, instructions, and publications. You will find details on 2019 tax changes and hundreds of interactive links to help you find answers to your questions.
- You may also be able to access tax law information in your electronic filing software.

Tax reform. Tax reform legislation affects individuals, businesses, and tax-exempt and government entities. Go to *IRS.gov/TaxReform* for information and updates on how this legislation affects your taxes.

IRS social media. Go to *IRS.gov/SocialMedia* to see the various social media tools the IRS uses to share the latest information on tax changes, scam alerts, initiatives, products, and services. At the IRS, privacy and security are paramount. We use these tools to share public information with you. **Don't** post your social security number or other confidential information on social media sites. Always protect your identity when using any social networking site.

The following IRS YouTube channels provide short, informative videos on various tax-related topics in English, Spanish, and ASL.

- *Youtube.com/irsvideos*.
- *Youtube.com/irsvideosmultilingual*.
- *Youtube.com/irsvideosASL*.

Watching IRS videos. The IRS Video portal (*IRSVideos.gov*) contains video and audio presentations for individuals, small businesses, and tax professionals.

Getting tax information in other languages. For taxpayers whose native language isn't English, we have the following resources available. Taxpayers can find information on IRS.gov in the following languages.

- *Spanish* (*IRS.gov/Spanish*).
- *Chinese* (*IRS.gov/Chinese*).
- *Korean* (*IRS.gov/Korean*).
- *Russian* (*IRS.gov/Russian*).
- *Vietnamese* (*IRS.gov/Vietnamese*).

The IRS Taxpayer Assistance Centers (TACs) provide over-the-phone interpreter service in over 170 languages, and the service is available free to taxpayers.

Getting tax forms and publications. Go to *IRS.gov/Forms* to view, download, or print most of the forms, instructions, and publications you may need. You can also download and view popular tax publications and instructions (including Pub. 80) on mobile devices as an eBook at no charge at *IRS.gov/eBooks*. Or you can go to *IRS.gov/OrderForms* to place an order and have them mailed to you within 10 business days.

Getting a transcript or copy of a return. You can get a copy of your tax transcript or a copy of your return by calling 800-829-4933 or by mailing Form 4506-T (transcript request) or Form 4506 (copy of return) to the IRS.

Resolving tax-related identity theft issues.

- The IRS doesn't initiate contact with taxpayers by email or telephone to request personal or financial information. This includes any type of electronic communication, such as text messages and social media channels.
- Go to *IRS.gov/IDProtection* for information.
- If your EIN has been lost or stolen or you suspect you're a victim of tax-related identity theft, visit *IRS.gov/IdentityTheft* to learn what steps you should take.

Making a tax payment. The IRS uses the latest encryption technology to ensure your electronic payments are safe and secure. You can make electronic payments online, by phone, and from a mobile device using the IRS2Go app. Paying electronically is quick, easy, and faster than mailing in a check or money order. Go to *IRS.gov/Payments* to make a payment using any of the following options.

- *Debit or Credit Card*: Choose an approved payment processor to pay online, by phone, and by mobile device.
- *Electronic Funds Withdrawal*: Offered only when filing your federal taxes using tax return preparation software or through a tax professional.
- *Electronic Federal Tax Payment System*: Best option for businesses. Enrollment is required.
- *Check or Money Order*: Mail your payment to the address listed on the notice or instructions.

DRAFT AS OF November 21, 2019

- *Cash*: You may be able to pay your taxes with cash at a participating retail store.
- *Same-Day Wire*: You may be able to do same-day wire from your financial institution. Contact your financial institution for availability, cost, and cut-off times.

What if I can't pay now? Go to *IRS.gov/Payments* for more information about your options.

- Apply for an *online payment agreement* (*IRS.gov/OPA*) to meet your tax obligation in monthly installments if you can't pay your taxes in full today. Once you complete the online process, you will receive immediate notification of whether your agreement has been approved.
- Use the *Offer in Compromise Pre-Qualifier* to see if you can settle your tax debt for less than the full amount you owe. For more information on the Offer in Compromise program, go to *IRS.gov/OIC*.

Understanding an IRS notice or letter. Go to *IRS.gov/Notices* to find additional information about responding to an IRS notice or letter.

Contacting your local IRS office. Keep in mind, many questions can be answered on IRS.gov without visiting an IRS Tax Assistance Center (TAC). Go to *IRS.gov/LetUsHelp* for the topics people ask about most. If you still need help, IRS TACs provide tax help when a tax issue can't be handled online or by phone. All TACs now provide service by appointment so you'll know in advance that you can get the service you need without long wait times. Before you visit, go to *IRS.gov/TACLocator* to find the nearest TAC, check hours, available services, and appointment options. Or, on the IRS2Go app, under the Stay Connected tab, choose the Contact Us option and click on "Local Offices."

The Taxpayer Advocate Service (TAS) Is Here To Help You

What Is TAS?

TAS is an ***independent*** organization within the IRS that helps taxpayers and protects taxpayer rights. Their job is to ensure that every taxpayer is treated fairly and that you know and understand your rights under the *Taxpayer Bill of Rights*.

How Can You Learn About Your Taxpayer Rights?

The Taxpayer Bill of Rights describes 10 basic rights that all taxpayers have when dealing with the IRS. Go to *TaxpayerAdvocate.IRS.gov* to help you understand *what these rights mean to you* and how they apply. These are ***your*** rights. Know them. Use them.

What Can TAS Do For You?

TAS can help you resolve problems that you can't resolve with the IRS. And their service is free. If you qualify for their assistance, you will be assigned to one advocate who will work with you throughout the process and will do everything possible to resolve your issue. TAS can help you if:

- Your problem is causing financial difficulty for you, your family, or your business;
- You face (or your business is facing) an immediate threat of adverse action; or
- You've tried repeatedly to contact the IRS but no one has responded, or the IRS hasn't responded by the date promised.

How Can You Reach TAS?

TAS has offices *in every state, the District of Columbia, and Puerto Rico*. Your local advocate's number is in your local directory and at *TaxpayerAdvocate.IRS.gov/Contact-Us*. You can also call them at 877-777-4778.

How Else Does TAS Help Taxpayers?

TAS works to resolve large-scale problems that affect many taxpayers. If you know of one of these broad issues, please report it to them at *IRS.gov/SAMS*.

TAS also has a website, *Tax Reform Changes*, which shows you how the new tax law may change your future tax filings and helps you plan for these changes. The information is categorized by tax topic in the order of the IRS Form 1040 or 1040-SR. Go to *TaxChanges.us* for more information.

TAS for Tax Professionals

TAS can provide a variety of information for tax professionals, including tax law updates and guidance, TAS programs, and ways to let TAS know about systemic problems you've seen in your practice.

DRAFT AS OF November 21, 2019