

Inside
this Issue...

IRS highlights EITC
Awareness
Page 2

Some Cincinnati and
Hartford payment P.O.
Boxes will close in 2020
Page 2

What is the Gig
Economy?
Page 2

Direct deposit is the
safest, fastest way
for your employees to
receive their tax refunds.
Page 3

Benefits of filing payroll
taxes electronically
Page 3

Ways to help employees
this tax season on paying
income tax electronically
Page 3

How to Classify Workers
for Federal Taxation
Page 4

New Overtime Rule Now
in Effect
Page 5

SSA/IRS

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A Newsletter for Employers

The IRS Issues Backup Withholding CP2100 or CP2100A Notices to Payers.

Understanding Your CP2100/2100A Notice

These notices let payers know backup withholding may need to begin for some payees-taxpayers. The payer may be responsible for backup withholding because a taxpayer identification number (TIN) is missing or there are incorrect name/TIN combinations.

The notices have a listing of missing, incorrect and not currently issued payee TINs. Large volume filers will receive a CD or DVD data file CP2100, mid-size filers receive a paper CP2100, and small filers receive a paper CP2100A.

What does a payer need to do?

Payers need to read the notice carefully. It explains the information the IRS received and how it affects payer information tax return(s) filings.

Payers should:

- Compare the listing(s) with the payer records.
- Begin backup withholding immediately for missing TINs and continue until the TIN is received. The payer must make up to three solicitations for the TIN: initial, first annual, second annual.

- Compare the accounts on the listing with the business records for incorrect TINs. If an account does not match, it could be the result of:

- Payee providing payer updated information prior to receiving the listing

- Clerical error in the information the payer submitted

- IRS processing error where the payee name and/or TIN combination on the listing is different than what the payer reported)

- Keep the notice for three years

In these situations, the only thing the payer should do is correct or update account records. The payer does not need to call or write the IRS to say that a correction was made, or that the records were updated.

More information is in [Publication 1281](#), Backup Withholding for Missing and Incorrect Name/TIN(s).



IRS highlights EITC Awareness

The Internal Revenue Service and its partners across the country launched the 14th annual Earned Income Tax Credit (EITC) Awareness Day on January 31, 2020 to emphasize the benefits of the credit.

For more than 40 years, the EITC has made life better for American workers and their families. It's an extremely important antipoverty credit that helps millions of people every year. That's why hundreds of IRS partners join this awareness campaign each year. They organize local media events, use social media and other

channels to alert millions of low- and moderate-income taxpayers about this important tax credit.

To receive it, taxpayers must have earned income and file a federal tax return — even if they don't owe any tax or aren't otherwise required to file.

Please share this information with your employees and point them to the [EITC Assistant](#) on [IRS.gov](#) to find out if they're [eligible](#).

IRS

Some Cincinnati and Hartford payment P.O. Boxes will close in 2020

The Internal Revenue Service is closing several business payment P.O. Boxes (or Lockbox addresses), in the Cincinnati and Hartford, Connecticut, areas beginning July 1, 2020. Payments to these closed locations will not be forwarded, they will be returned.

To avoid additional penalties and interest, help taxpayers should ensure timely receipt by checking [Where to File on IRS](#).

gov before mailing their payment. Taxpayers can send their payment to the address in their payment letters.

IRS encourages taxpayers to use [IRS Direct Pay](#). It's fast, secure and easy to pay a tax bill or estimated tax payment directly from a checking or savings account. Users receive instant confirmation that their payment has been made. IRS

What is the Gig Economy?

IRS launched a new [Gig Economy Tax Center](#) on [IRS.gov](#) to help people in this growing area meet their tax obligations through more streamlined information.

The gig economy is also known as the sharing, on-demand or access economy. It usually includes businesses that operate an app or website to connect people to provide services to customers. While there are many types of gig economy businesses, ride-sharing and home rentals are two of the most popular.

Educating gig economy workers about their tax obligations is vital because many don't receive W-2 forms, 1099s or other information returns for their work in the gig economy. However, income from these sources is generally taxable, regardless of whether workers receive information returns. This is true even if the work is full time, part time or if the person is paid in cash. Workers may also be required to make quarterly estimated income tax payments, pay their share of Federal Insurance Contribution (FICA), Medicare

and Additional Medicare taxes if they are employees and pay self-employment taxes if they are not considered to be employees.

The Gig Economy Tax Center streamlines various resources, making it easier for taxpayers to find information about the tax implications for the companies that provide the services and the individuals who perform them.

It offers tips and resources on a variety of topics including:

- filing requirements
- making quarterly estimated income tax payments
- paying self-employment taxes
- paying FICA, Medicare and Additional Medicare
- deductible business expenses
- special rules for reporting vacation home rentals

More information, is on the new [Gig Economy Tax Center](#) on [IRS.gov](#).

IRS

Employees should choose Direct Deposit for the fastest way to receive their refunds

The fastest way for employees to get their tax refund is to file their 1040 Forms electronically and have the refund deposited directly into their bank account. Their bank credits their account with the exact amount of their refund. This is the same electronic transfer system used to deposit nearly 98 percent of all Social Security and Veterans Affairs benefits into millions of accounts. It's a faster, safer, and a greener way to receive a tax refund.

Here are some reminders for employees.

- Direct deposit is easy to use. Select it as your refund method through your tax software
- Tell your tax preparer you want to receive your refund by direct deposit into your account
- Choose direct deposit even if you still file by paper; your deposit will take longer because of the longer time to process paper tax returns mailed to the IRS

You'll need to have your bank account and routing number available when you're filing to get direct deposit. Most routing and account numbers can be located on your online banking app, your bank's website or by contacting your bank directly. It's important for you to double check your bank account information, after it's entered, to avoid errors and a possible delay in receiving your refund. And, you can choose to have your refund deposited into one, two or even three of your own bank accounts. For more information go to [IRS.gov/directdeposit](https://www.irs.gov/directdeposit).

Whether you file electronically or on paper, direct deposit gives you access to your refund faster than a paper check. Direct deposit also avoids the possibility that your check could be lost or stolen or returned to IRS as undeliverable. [IRS](#)

Benefits of filing payroll taxes electronically

Business owners should consider filing payroll and employment taxes electronically.

Benefits of filing electronically over paper filing:

- It's faster
- It's more secure and accurate
- You get an email to confirm the IRS received the form within 24 hours.

Ways businesses can e-file:

- Employers can e-file using [IRS-approved software](#). The software instructs the user to [apply for an online signature PIN](#). Employers should allow at least 45 days to receive their PIN.
- Employers can have their tax professional file for them. The [Authorized IRS e-file Provider Locator Service](#) can help employers locate an [Electronic Return Originator](#).

More information is on the [E-File Employment Tax Forms](#) page on [IRS.gov](#)

[IRS](#)

Ways to help employees this tax season on paying income tax electronically

Employers can give their employees some help at tax time by reminding them about the importance of timely filing and paying their taxes. There are several payment options available to taxpayers but paying electronically is the safest and easiest way to pay tax to avoid any penalties or interest.

Electronic tax payment choices include:

- [IRS2Go](#) is the official mobile app of the IRS and offers mobile-friendly payment options, in addition to free tax help and an option to check the status of a federal refund.
- [Electronic Funds Withdrawal](#) offers a direct debit payment option when e-filing federal taxes using tax preparation software or a tax professional.
- [IRS Direct Pay](#) is a method to pay tax directly from a checking or savings account.
- [Pay by Debit or Credit Card](#) offers payment by debit card or credit

card.

- [Pay with Cash](#) is the way to pay tax with cash at a participating retail store. It generally takes 5 – 7 business days to process the payment.

Paying Your Taxes has more information about these tax payment methods and more.

Additional information:

- [Report Phishing and Online Scams](#) provides resources to help taxpayers recognize suspicious or unsolicited calls, emails or text messages claiming to be from the IRS.
- Visit [View Your Account Information](#) to check on balance due accounts, payment history and more. [IRS](#)

How to Classify Workers for Federal Taxation

Worker classification has become more complicated in recent years because of the variety of ways individuals earn income, mechanisms used by employers to arrange their businesses, and the different government authorities that play a role in establishing definitions. For federal employment taxes purposes, the IRS maintains jurisdiction. Under the IRS's rules for classifying workers, employers are responsible for identifying their relationship to workers and for withholding and remitting taxes accordingly.

The worker classification made by an employer is important because of the role employers play in withholding and paying federal employment taxes. The cost associated with misclassifying a worker can be substantial for an employer.

For employees, employers are required to withhold, report, and remit income taxes, and pay Social Security, Medicare, and unemployment taxes based on the amount of wages paid. Normally, employers do not withhold and pay any taxes for workers classified as independent contractors. Instead, independent contractors manage their own taxes following the IRS's rules for self-employment.

The general rule on classifying workers is that an individual is an independent contractor if the employer has the right to control or direct only the results of the work. If an employer has the right to control what work will be done and how the work will be performed, the worker is an employee.

How should employers make the worker classification decision?

For employers to better understand how to make the decision, the IRS offers guidance in three categories:

- (1) behavioral control,
- (2) financial control, and
- (3) the relationship between the employer and worker.

Behavioral controls

If the employer has the right to direct or control the work performed, the individual is an employee, even if the employer does not exercise that right. When considering the level of control, an employer can look to the instructions it provides to workers, such as directions on when and where to work, tools used to perform the work, and where to purchase materials and supplies. The more detailed these instructions, the more likely an individual is an employee. How an employer evaluates the work also can be an indicator. For example, is the employer only measuring the work at the end (independent contractor) or are aspects of the work measured at scheduled intervals (employee)?

Financial controls

In the financial control category, an employer should review its control over monetary and business aspects of the work. This includes the level of the employer's investment in equipment, opportunities for profit or loss, whether the individual offers services in the market, and the method of payment.

If the individual offers the same or similar services to many employers, the individual is more likely an independent contractor. Employees are usually paid wages through a payroll department on a pay period basis, even if paid by commission, piece rate, or other method. Independent contractors are often paid by the project or some other flat rate.

Nature of the Relationship

Be careful of contracts. A written agreement indicating that an individual is an employee, or an independent contractor is not sufficient to determine worker classification for federal tax purposes. In addition, an employer should not rely upon the word of an individual who desires to self-identify as an independent contractor.

Instead, employers should examine benefits. If the employer provides insurance, contributes to or manages withholding for a retirement plan, or offers vacation or sick pay, this creates an employer-employee relationship. In general, employers do not offer these types of benefits to independent contractors. In addition, if the work performed is seen as a key part of an employer's regular business, the individual is likely an employee.

An employer must secure an independent contractor's taxpayer identification number (TIN) if the arrangement includes a reportable payment (i.e., a reportable payment for Forms 1099-MISC and 1099-NEC is in excess of \$600). As a best practice, employers may ask independent contractors to complete a Form W-9, Request for Taxpayer Identification Number and Certification. However, the only time a Form W-9 is required by the IRS is when a business receives a CP2100 Notice identifying that there is a missing, incorrect, or mismatched TIN on a Form 1099.

What are the consequences of misclassifying a worker?

Generally, Internal Revenue Code (IRC) § 3509 is used by the IRS to compute a tax assessment when an employer misclassifies a worker as an independent contractor. However, in the case of intentional disregard, the employer can be assessed the full amount of employment taxes, including employer Federal Insurance Contribution Act (FICA) amounts, employee FICA, and federal income tax withholding. When IRC § 3509 rates are used, the employer may not seek reimbursement from the worker. When full rates are used, the employer is entitled to seek reimbursement from the employee of the employee FICA amount it paid because of the employment tax assessment. In addition, although the employer is liable for the federal income tax withholding, the employer can request an abatement under IRC § 3402(d) if the employee reported the income and paid income tax on the amount paid.

If an employer is selected for an employment tax examination to determine whether workers were classified correctly, the employer may be entitled to relief under Section 530 of the Revenue Act of 1978 as described in IRS [Publication 1976, Do You Qualify for Relief Under Section 530?](#) To be entitled to relief under Section 530, three requirements must be met: (1) the employer timely filed all required federal tax returns, including information returns, as if the individual was not an employee; (2) the employer or predecessor employer must not have treated the worker, or any worker holding a substantially similar position, as an employee at any time after December 31, 1977; and (3) the employer had a reasonable basis for not treating the worker as an employee.

The IRS's Voluntary Classification Settlement Program (VCSP) offers certain employers the option to reclassify workers as employees with partial relief from paying past federal employment taxes. Eligibility includes consistent treatment of workers as independent contractors. In addition, the employer cannot currently be under an employment tax audit by the IRS. To participate, an employer must submit to the IRS [Form 8952, Application for Voluntary Classification Settlement Program](#).

If employers are unsure about how to classify workers, they can use [Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding](#). [Publication 15-A, Employer's Supplemental Tax Guide](#), provides additional information on worker classification. The IRS's website at www.irs.gov includes more information on the VCSP.

This article was written by the American Payroll Association (APA). For more information on APA, go to www.americanpayroll.org. 

New Overtime Rule Now in Effect

On January 1, 2020, the U.S. Department of Labor's final rule to make 1.3 million more American workers eligible for overtime pay under the Fair Labor Standards Act (FLSA) became effective.

"For the first time in over 15 years, America's workers have an update to overtime regulations that puts overtime pay into the pockets of more than a million working Americans," said Wage and Hour Administrator Cheryl Stanton. "This rule brings a commonsense approach that offers consistency and certainty for employers as well as clarity and prosperity for American workers."

The final rule updates the earnings thresholds necessary to exempt executive, administrative or professional employees from the FLSA's minimum wage and overtime pay requirements and allows employers to count a portion of certain bonuses and commissions towards meeting the salary level.

The new thresholds account for growth in employee earnings since the previously enforced thresholds were set in 2004. In the final rule, the Department:

- raises the "standard salary level" from the previously enforced level of \$455 to \$684 per week (equivalent to \$35,568 per year for a full-year worker);
- raises the total annual compensation level for "highly compensated employees" from the previously enforced level of \$100,000 to \$107,432 per year;
- allows employers to use nondiscretionary bonuses and incentive payments (including commissions) that are paid at least annually to satisfy up to 10 percent of the standard salary level, in recognition of evolving pay practices; and

- revises the special salary levels for workers in U.S. territories and in the motion picture industry.

The increases to the salary thresholds were long overdue in light of wage and salary growth since 2004. Nearly every person who commented on the Department's 2017 Request for Information, participated at listening sessions in 2018 regarding the regulations, or commented on the Notice of Proposed Rulemaking agreed that the thresholds needed to be updated for this reason.

The Department estimates that 1.2 million additional workers are now entitled to minimum wage and overtime pay as a result of the increase to the standard salary level. The Department also estimates that an additional 101,800 workers are entitled to overtime pay as a result of the increase to the HCE compensation level.

A 2016 final rule to change the overtime thresholds was enjoined by the U.S. District Court for the Eastern District of Texas on November 22, 2016 and was subsequently invalidated by that court. As of November 6, 2017, the U.S. Court of Appeals for the Fifth Circuit has held the appeal in abeyance pending further rulemaking regarding a revised salary threshold. As the 2016 final rule was invalidated, the Department consistently enforced the 2004 level throughout the last 15 years.

The Wage and Hour Division encourages employers to make use of the many tools provided at the [U.S. Department of Labor: Wage and Hour Division](#) to learn more about their responsibilities under the FLSA, and to call the agency directly for confidential help at 866-4US-WAGE. Trained Wage and Hour Division professionals are available to answer questions. More information about the final rule is available at [Final Rule: Overtime Update](#). **DOL**



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