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Employment Tax Issues



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Tip Reporting Guidance

- Rev. Rul. 2012-18, 2012-26 I.R.B. 1032
Issued July, 2013
- Q&A 1 of Rev. Rul. 2012-18 reaffirms long time IRS position on tip wages vs. service charges (non-tip wages) first published in Rev. Rul. 59-252, 1959-2 C.B. 215.



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Criteria for Considering Whether Payments are a Tip

Absent the following factors the payment may be a service charge and not a tip:

- Payment made free from compulsion
- Customer has unrestricted right to determine the amount
- Payment not subject of negotiation or dictated by employer policy
- Generally, customer has the right to determine who receives the payment



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Employment Tax Treatment of Service Charges vs. Tips

Service charges or “auto gratuities” distributed to an employee should be characterized as non-tip FICA wages, not as tips

- W-2 reporting of service charges
- Withholding requirements on service charges
- Service charges do not qualify for the 45B credit whereas a certain amount of tips do qualify



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Common Examples of Service Charges / Auto Gratuities

If distributed by an employer to an employee, the following are examples of service charges:

- Banquet service fees
- Resort or cruise “Added Charge”
- Room service charge
- Large party / bottle service charge
- Contracted luggage assistance charge
- Mandated delivery charge (pizza, groceries, etc.)



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Additional Resources

Other IRS resources to assist employers and employees with reporting compliance

- Rev. Rul. 2012-18, 2012-26 I.R.B. 1032
- Ann. 2012-25, 2012-26 I.R.B. 1054 as updated by Ann. 2012-50, 2012-52 I.R.B. 802
- IRS Publications via irs.gov
- IRS Tip Mailbox TIP.Program@irs.gov



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Additional Medicare Tax (AdMT) for Employers

- Applies to tax years beginning after 12/31/2012
- Employers required to withhold 0.9 % AdMT on wages or compensation paid to an employee in excess of \$200,000 in the calendar year
- New line 5(d) for reporting AdMT withholding added to Form 941
- Withheld amount reported with regular Medicare tax on Form W-2, Box 6



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Additional Medicare Tax (AdMT) Takeaways

- Employees can't request AdMT withholding but may request additional income tax withholding on Form W-4
- TIP – Applies to tip income and SE Income if in excess of the applicable threshold amount
- No employer match
- Form 8959 on Form 1040
 - Reconciles AdMT liability
 - Reconciles AdMT withholding



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1120S Officers' Compensation

Compliance Focus

- Zero (or very small) wages paid and significant distributable income
- Officer performs significant services
- Employment taxes reduced or eliminated
- **CASE STUDY - WATSON**



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Independent Contractor or Employee

Three Categories of Evidence:

- Behavioral Control - Instruction, evaluation, training
- Financial Control - Investment, method of payment, ability to make a profit or incur a loss, services available to others
- Relationship of the Parties - Written contract, permanency, integral part of business



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Independent Contractor *or Employee*

Tax Court Considerations

1. Degree of Control
2. Investment in Facilities
3. Options for Profit and Loss
4. Right to Discharge
5. Integral Part of Business
6. Permanency of Relationship



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Case Study

- *PENO TRUCKING*



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Voluntary Classification Settlement Program (VCSP)

- Simple application and eligibility process
- Audit protection for past years



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VCSP Eligibility

- Taxpayer agrees to prospectively treat a class or classes of workers as employees
- Small payment required – just over 1% of compensation



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VCSP Eligibility

Eligible Businesses

- Must have consistently treated the class of workers as nonemployees
- Must have filed Forms 1099 for the class of workers for previous three years
- Must not be under Employment Tax examination by IRS, US DOL, or state regarding worker classification
- Can be tax-exempt organization or government entity



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Form 1099-MISC Compliance

- Secure correct TIN – Form W-9 may be used
- Issue Forms 1099-MISC
- IRS CP 2100 or CP 2100A for returns filed with missing or incorrect TINs
- Backup Withholding for missing and incorrect name / TINs
- Information return penalties



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Modernized e-File (MeF)

- File Forms 940, 941, 944 in single transmission file
- Receive complete information regarding location and type of each error identified
- Receive acknowledgement of transmissions processed in real time
- File balance due returns and authorize electronic funds withdrawals or credit card payment at the same time
- Continue to sign returns with IRS issued Personal Identification Numbers (PINs)



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Hot Spots on IRS.gov

Topic	Search Word(s)
Electronic Newsletters	e-news
Multimedia Center / social media	IRS new media
IRS tax videos	Video portal
Basic tools for tax professionals	Basic tools
E-Services – online tax tools	Eservice
New IRS Pub 5136 – A guide to tax information and services for individual taxpayers	5136
SB/SE Tax Calendar	Tax calendar
Continuing education for tax pros	Tax pros