

DEPARTMENT OF STATE TREASURER POLICIES MANUAL  
 PAYROLL  
 SECTION 40

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**Synopsis**

- 1) The major responsibilities over payroll can be separated into the following functional areas:
  - 1) personnel administration, 2) timekeeping and payroll preparation, 3) payment of payroll, and 4) payment of taxes and preparation of payroll tax returns.
- 2) Personnel administration involves the process of interviewing and hiring employees, gathering forms related to employment and payroll, maintaining personnel files, and establishing personnel policies.
- 3) Federal law requires employers to verify that each new employee is legally eligible to work in the United States. Employers must document this verification on Form I-9, "Employment Eligibility Verification".
- 4) Lump sum awards of sick leave are not eligible to count toward creditable service in the determination of retirement benefits in the Local Governmental Employees' Retirement System, and the Teachers' and State Employees' Retirement System.
- 5) The timekeeping and payroll preparation function includes the preparation of time and attendance records for hourly and salaried employees, respectively; the summation and calculation of gross pay, deductions, and net pay; the preparation of payroll checks and/or direct deposit advices; and the maintenance of payroll records.
- 6) The payroll checking account should be maintained on an imprest basis.
- 7) Generally, employers must deposit, at least monthly, payroll taxes that total \$1000 or more in accordance with deposit rules established by the IRS.
- 8) Employers must use Form 8109, "Federal Tax Deposit Coupon", to deposit employment taxes and most other types of federal taxes that must be deposited.
- 9) Employers must remit withheld State income taxes either quarterly, monthly, or on an accelerated basis. The N.C. Department of Revenue will make a deposit schedule determination after an employer applies for an identification number.
- 10) Periodically, employers must file payroll tax returns, unemployment tax returns, and Wage and Tax Statement Information with the federal government and the State of North Carolina. The basic returns that must be filed with the IRS include Form 940, Form 941, Form W-2, and Form W-3. For the State, payroll taxes must be filed with the Department of Revenue using Form NC-5, NC-5M, or NC-5P. In addition, Form NC-3 and the

- State copy of Form W-2 must be filed. Form NCUI 101 must be filed with the Employment Security Commission.
- 11) The IRS and the North Carolina Department of Revenue can impose substantial penalties if the deposit and reporting requirements are not met.
  - 12) Payments made to board members for serving on the governing board and payments made to qualified law enforcement officers for the special separation allowance are subject to FICA and federal and State income tax withholding and must be reported on Form W-2. Payments to law enforcement officers under the special separation allowance are not eligible for the State's \$4,000 exclusion from taxable income for retirement benefits.
  - 13) In general, employers that file information returns with the IRS must file using magnetic media. For the North Carolina Department of Revenue, magnetic media reporting is optional. The Employment Security Commission requires employers with 250 or more employees to file on magnetic media a portion of Form NCUI 101, "Employer's Quarterly Tax and Wage Report".
  - 14) The IRS and the N.C. Department of Revenue are concerned that some units may be misclassifying certain individuals as independent contractors instead of as common-law employees. The tax consequences of such a misclassification could be significant to a unit of government.
  - 15) To help employers determine whether an individual is an employee under the common law rules, the IRS has identified factors that indicate whether sufficient control is present to establish an employer-employee relationship.
  - 16) During the course of business, a unit may make certain nonwage payments accumulating to \$600 or more that must be reported to the IRS. These nonwage payments are usually reported on IRS Form 1099-MISC, "Statement for Recipients of Miscellaneous Income". Such nonwage payments no longer have to be reported to the N.C. Department of Revenue if such amounts are reported to the IRS, except for non-residents (see item 20 below).
  - 17) Payments made to corporations and tax exempt organizations are generally not required to be reported on Form 1099-MISC. The exceptions are medical and health care payments, and attorneys' fees or gross proceeds.
  - 18) In certain cases, the IRS may require that a unit withhold 20 percent of a vendor's payment. Backup withholding may be required if a vendor subject to 1099 reporting does not furnish a tax identification number to the unit or furnishes an incorrect number. The N.C.

Department of Revenue does not require any backup withholding of State income tax except as mentioned below in item 20.

- 19) Units that fail to comply with the information reporting requirements are subject to substantial penalties by the IRS.
- 20) Withholding from compensation paid to certain nonresidents for personal services rendered in North Carolina is required.
- 21) Dual office holding by officials is allowed.
- 22) The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, recordkeeping, and child labor standards that affect full-time and part-time workers in the private and public sectors.
- 23) Under the FLSA, covered non-exempt workers are entitled to a minimum wage of not less than \$5.15 per hour. After 40 hours of work in a workweek, such workers must receive overtime pay at a rate not less than one and one-half times their regular rates of pay.
- 24) The FLSA provides State and local government employers with certain exemptions from the overtime pay requirements. These exemptions pertain to 1) the use of compensatory time, 2) occasional or sporadic employment, and 3) small employers.
- 25) The FLSA provides a partial overtime exemption for fire protection and law enforcement personnel who are employed by public agencies on a work period basis. Under this exemption, no overtime compensation is required until the number of hours worked exceeds maximum hour standards.
- 26) Under the FLSA, the following groups of employees are exempted from both the minimum wage and the overtime pay provisions: 1) elected public officials, their immediate advisors and appointees, and 2) executive, administrative, and professional employees.
- 27) The FLSA requires employers to maintain accurate records on wages, hours, and certain other items for all employees.
- 28) The provisions of the FLSA are enforced by compliance officers of local wage and hour offices of the U.S. Department of Labor. Employers who willfully violate the FLSA may be prosecuted criminally and may be subject to civil monetary penalties.
- 29) The Family Medical Leave Act requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons.

### **Introduction**

This policy will provide an overview of the payroll function. The payroll process begins with the hiring of personnel and ends with remittances to governments and other organizations for payroll taxes and other withholdings. For most governmental units, payroll and other personnel costs represent a significant portion of total expenditures. In addition, government employers are subject to a wide variety of laws and regulations, including the provisions of the Fair Labor Standards Act. As a result, governmental units should establish proper procedures and controls over the payroll function. The major responsibilities over payroll can be separated into the following functional areas.

- 1) Personnel Administration
- 2) Timekeeping and Payroll Preparation
- 3) Payment of Payroll
- 4) Payment of Taxes and Preparation of Payroll Tax Returns

To the extent possible, an adequate segregation of duties should exist between each functional area. Each functional area is discussed below.

### **Personnel Administration**

This function involves the process of interviewing and hiring employees, gathering forms related to employment and payroll, maintaining personnel files, and establishing personnel policies. Some of these activities may require the involvement of the governing board.

### **Interviewing and Hiring Employees**

Before a unit begins to interview prospective employees, it should have a written job description on file for each position. Each job description should provide specific information about the position's duties and responsibilities and should include a salary range. The salary range should be based on a market analysis of the unit's own geographic area. The immediate supervisor should review and approve each job description. In addition, a unit should require an employment application from and an investigation of all prospective employees. The investigation should include checking the employee's background, former employers, and references. Physical examinations may be required for police and fire personnel. Drug testing may also be appropriate. For positions that require the operation of a motor vehicle, the applicant's driving record should be checked. All information should be documented in writing. The employment application is used to evaluate an applicant's experience and qualifications. If the applicant is hired, the employment application becomes part of the employee's personnel file. Documentation of any required

licenses or certificates for the position should be obtained. Misleading information, omissions, and material inaccuracies may constitute grounds for dismissal of an employee. A statement to this effect should be clearly made on the application and should be signed by the applicant. Finally, employment applications from applicants not hired should be kept on file and the reasons for not hiring the applicants should be documented. For retention periods of these records (normally 2 years) refer to the Records Services Branch of the North Carolina Department of Cultural Resources, 919-733-3540 or their web site, [www.ah.dcr.state.nc.us/sections/archives/rec](http://www.ah.dcr.state.nc.us/sections/archives/rec).

Furthermore, before a new employee is hired, an authorized position must be available, and it must be funded by an appropriation in the budget ordinance. Because each new position will require a continuing appropriation, a unit should carefully analyze the need for each new position and should consider its impact on future budgets.

**Gathering Forms Related to Employment and Payroll** (Form I-9, Form W-4, Form NC-4, and Form W-5 and Social Security Card)

Standard forms related to employment and payroll must be completed for each new employee. Federal law (Title 8, U.S. Code, Section 1324A) requires an employer to document that each new employee is legally eligible to work in the United States. Employers must document this verification on Form I-9, "Employment Eligibility Verification". The failure to present this form for inspection to officers of the Immigration and Naturalization Service or the Department of Labor within the time period specified by regulation, or improper completion or retention of this form may result in a civil penalty. A copy of the employment verification regulations is included in the Federal Register, Vol. 52, No. 84, published May 1, 1987.

These regulations were to be revised with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), however final regulations and revised forms have not been promulgated. Interim rules were published in the Federal Register, Vol. 62, No. 189, and Vol. 64, No. 26, dated September 30, 1997 and February 9, 1999, respectively. These interim rules implemented the changes required by the IIRIRA while at the same time retaining the status quo until a comprehensive revision of rules, forms, and guidance could be completed. Employers are advised to use the existing Form I-9 (11/21/91 version, reprinted in Appendix A) under the interim rules. The interim rules affect the list of documents that employees may present to establish both identity and eligibility to work ("List A") and the "receipt rule."

Employers should be aware of the changing nature of these requirements and obtain the latest version of Form I-9 from

the U.S. Government Printing Office at (202) 512-1800, from an Immigration and Naturalization Service office of the U.S. Department of Justice or their web site, [www.ins.usdoj.gov](http://www.ins.usdoj.gov).

An employer must also get each new employee's social security number (this requirement applies to resident and nonresident alien employees). The employee is required to show the social security card if they have it available. Any employee who does not have a social security card may get one by completing Form SS-5, "Application for a Social Security Card". They can get the form at the Social Security Administration office or by calling 1-800-772-1213. If the employee applied for a SSN, but does not have it when you must file Form W-2, enter "Applied For" on the form. When the employee receives the SSN, file Form W-2c, "Corrected Wage Tax Statement", to show the employee's social security number.

In addition, an employer should obtain federal and State withholding allowance certificates (Form W-4 and Form NC-4) from each of its employees. An employer uses these certificates in determining how much income tax to withhold from an employee's wages. If an employee does not provide the employer with a completed Form W-4, federal taxes should be withheld as if the employee is single with no withholding allowances. If a completed Form NC-4 is not provided, State taxes should be withheld as if the employee is single with one withholding allowance. These certificates will remain in effect until new ones are submitted by the employee and should be kept on file for four years after an employee is terminated. Generally, an employer is not required to submit copies of these certificates to the IRS or the N.C. Department of Revenue. However, an employer is required to submit copies of these certificates to the IRS and/or the N.C. Department of Revenue when an employee 1) claims more than 10 withholding allowances, or 2) claims exemption from withholding when his/her wages would normally exceed \$200 per week. In these cases, an employer should complete boxes 8 and 10 on the certificates and submit copies of the forms with the employer's monthly and/or quarterly payroll tax returns. Also, employers should send copies of any written statements from employees in support of the claims made on the certificates.

G.S. 110-129.2 requires reporting of W-4 information to the State Directory of New Hires for purposes of enforcing child support orders, and identifying recipients of public assistance and unemployment compensation who fail to report earnings. For newly hired personnel, a copy of their W-4, including employer information in boxes 8 and 10, or an equivalent form, should be transmitted magnetically, electronically, or by first-class mail to the New Hire Operations Center, PO Box 900004, Raleigh, NC, 27675-9004. For additional information, contact the NC New Hire Operations Center, 1-888-514-4568, or their web site, [www.ncnewhires.com](http://www.ncnewhires.com).

Employees who are eligible for the earned income credit (EIC) and have a qualifying child are entitled to receive EIC payments with his or her pay during the year. To get these payments, the employee must give you a properly completed Form W-5, "Earned Income Credit Advance Payment Certificate". Eligible employees must file a new Form W-5 each year to initiate advance payments for that year. You are required to make advance EIC payments to employees who give you a completed and signed Form W-5.

Certain employees who do not have a qualifying child may be able to claim the EIC on their tax return. However, they cannot get advance payments. You must notify employees who have no income tax withheld that they may be able to claim a tax refund because of the EIC. Although you do not have to notify employees who claim exemption from withholding on Form W-4, "Employee's Withholding Allowance Certificate", about the EIC, you are encouraged to notify any employee whose wages are less than the maximum qualifying wage amount for each year as set by the IRS. You will meet this notification requirement if you issue the IRS Form W-2 with the EIC notice on the back of Copy B, or a substitute Form W-2 with the same statement. You may also meet this requirement by providing Notice 797, "Possible Federal Tax Refund Due to the Earned Income Credit (EIC)", or your own statement that contains the same wording.

For more information about the EIC, refer to IRS Publication 596, "Earned Income Credit". Copies of Form W-4 and Form W-5 can be obtained from the IRS Forms Distribution Center at (800) 829-3676 or by downloading from the IRS Internet web site, [www.irs.ustreas.gov](http://www.irs.ustreas.gov). Copies of Form NC-4 can be obtained from the N.C. Department of Revenue in Raleigh at (919) 733-3261, or their web site, [www.dor.state.nc.us](http://www.dor.state.nc.us).

All of the above forms should be part of an employee's personnel file. The maintenance of personnel files is discussed in the next section.

### **Maintaining Personnel Files**

A personnel file should be established and updated periodically for each employee and should include all relevant employee information. It should contain the necessary payroll deduction forms completed and signed by employees. The personnel files should be stored at a secure location, where access can be limited. Generally, the following documents should be included in the personnel files:

- a) Employment application
- b) Personnel investigations
- c) Hiring authorization
- d) Salary history

- e) Federal and State withholding forms (Form W-4 and Form NC-4)
- f) Earned Income Credit Advance Certificate (Form W-5), if applicable
- g) Employment Eligibility Verification (Form I-9)
- h) Hospital and retirement deduction information
- i) Authorization for all other payroll deductions
- j) Performance evaluations
- k) Documentation of promotions, demotions, transfers, etc.
- l) Termination notices
- m) Documentation of other important personnel actions
- n) Social Security Card photocopy

The rate of pay and deduction information included in the personnel files should be forwarded to the payroll section. However, physical controls that prevent the loss of records and prevent use by unauthorized persons should be established over the personnel records. According to the General Statutes (i.e., G.S. 160A-168 for cities and G.S. 153A-98 for counties), employee personnel files are not available for general public inspection, except that the following information about each employee is a matter of public record: name, age, date of original employment, current position title, current salary, date and amount of the most recent change in salary, date of the most recent change in position classification, and the office to which the employee is currently assigned. In addition, the governing bodies of public authorities are authorized to adopt rules and regulations for the safekeeping of employee personnel files.

#### **Establishing Personnel Policies**

Every unit should have a personnel policies manual that is approved by the governing board. This manual should be updated regularly, and a copy should be made available to every employee. The following information should be included in the manual:

- a) Policies prohibiting employment of individuals resulting in nepotism, conflicts of interest, or discrimination.
- b) Policies that reflect appropriate emphasis on equal employment opportunity considerations.
- c) Consistently written personnel policies regarding vacation, sick leave, attendance reporting, and employee benefits. The policies should include the amount of vacation and sick leave earned each month as well as the amount of leave that can be accumulated and carried forward to the next year.

- d) Policies establishing procedures for evaluating employees and awarding merit increases.
- e) Policies for annual uninterrupted vacations.
- f) Drug-testing policies.
- g) Sexual harassment policy

In order for sick leave to qualify for determining creditable service for the Local Governmental Employees' Retirement System, and the Teachers' and State Employees' Retirement System, sick leave must be earned monthly under a policy adopted by the governing board, and the employee must be able to use and receive payment for the sick leave. Lump-sum awards of sick leave are not eligible to count toward creditable service in determining retirement benefits. Sick leave policies should not allow lump-sum awards of sick leave. For further information, please refer to LGC Memo #879 dated April 23, 1999.

#### **Timekeeping and Payroll Preparation**

This function includes the preparation of time and attendance records for hourly and salaried employees, respectively; the summation and calculation of gross pay, deductions, and net pay; the preparation of payroll checks and/or direct deposit advices; and the maintenance of payroll records. To ensure that hourly workers are only paid for the actual hours worked, time sheets or logs should be maintained and/or time clocks should be used, when practical. In addition, an approval by the appropriate supervisor should be made on the time records, verifying the actual hours worked. Overtime hours should not be allowed unless specific approval was granted in advance. Each year, the federal and State tax tables, which are used to compute the amount of withheld taxes, must be updated for any changes. The federal tax tables are included in Circular E, Employer's Tax Guide, published by the Internal Revenue Service (IRS). The State tax tables are included in the State of North Carolina Income Tax Withholding Tables and Instructions for Employers, issued by the North Carolina Department of Revenue. Periodically, the rate of pay and deduction information should be reconciled to employee personnel records. In addition, vacation and sick leave records should be kept for all employees. Earned leave should be reported to employees periodically and may be included on the employees' pay stubs. Gross pay for an employee should be adjusted for any leave deficiency. Any adjustment should be supported by adequate documentation and must be approved by an authorized official.

#### **Payroll Records**

During the year, records of each payroll should be maintained. The basic records should include time records,

a payroll check register, a payroll journal, and an earnings record for each employee. The check number, employee name, and net pay amount from each payroll check should be recorded in a payroll check register. Also, the gross pay, withholdings, and net pay should be recorded in a payroll journal. At least monthly, the payroll journal should be totaled and posted to the general ledger. In addition, an earnings record should be maintained for each employee, indicating the gross pay and withholdings for each payroll. Month-to-date, quarter-to-date, and year-to-date totals should be included in each earnings record to facilitate preparation of payroll tax returns and W-2s.

The Internal Revenue Service recommends keeping the following records for at least 4 years:

- a) Amount and dates of all wage, annuity and pension payments
- b) Names, addresses, social security numbers, and occupations of employees and recipients
- c) Any employee copies of Form W-2 that were returned to you as undeliverable
- d) Dates of employment
- e) Periods for which employees were paid while absent due to sickness or injury, and the amount and weekly rate of payments you or third party payers made to them
- f) Copies of employees' income tax withholding allowance certificate
- g) Dates and amounts of tax deposits made by the unit
- h) Copies of filed returns
- i) Records of fringe benefits provided, including substantiation

### **Payroll Processing**

Payroll can either be prepared in-house or processed by an outside service organization. Important factors influencing the processing decision would be the number of employees, familiarity with payroll regulations, and the sophistication of the accounting system. Before selecting a processing method, a unit should compare the costs versus the benefits of each method.

### Payment of Payroll

#### **Imprest Payroll Account**

A separate payroll checking account should be maintained on an imprest basis. In an imprest payroll account, a separate payroll checking account in the unit's name is established with a small balance to cover any periodic service charges. The small balance may be waived if additional accounts are held at the same bank, and the payroll service charges are debited to these accounts. For each payroll, the exact amount of the total net payroll is transferred from the general account to the payroll account immediately before the distribution of the payroll. If the check deposited into the imprest account for the amount of the net payroll has a signed preaudit certificate, any individual payroll checks distributed to employees do not need a preaudit certificate (G.S. 159-28(d), 2<sup>nd</sup> para.) After all payroll checks and electronic transfers have cleared, only the nominal balance should remain in the payroll account.

An imprest payroll account has numerous advantages. First, it limits a government's exposure to payroll fraud. For example, if an employee altered a payroll check to reflect a substantially higher issue amount, the unit would be notified by its financial institution that its payroll account had insufficient funds. Consequently, the unit could start investigating the reason for the overdraft and could take steps immediately to recover the embezzled amount. Another advantage is that reconciliation of the central depository is facilitated by an imprest payroll account. Finally, a unit's cash management program could be enhanced, since idle cash for payroll would be kept at a minimum.

#### **Direct Deposit**

If a unit plans to use direct deposit to pay its employees, then it must obtain an agreement with a bank or savings institution for direct deposit services. In this agreement, the financial institution contracts that each employee will receive proper account credit in whatever institution the employee selects. The unit agrees to pay a set fee per transaction and to supply the bank or savings institution with all necessary funds and payroll information, including the bank transit number and account number for each employee. A unit can obtain these numbers from a voided check or deposit slip provided by each employee. In addition, the unit is usually required to assign an identification number for each employee. The financial institution normally has a standard form that can be used to record this information.

The bank or savings institution uses this information to allow each employee's account to accept direct deposit of

payroll. At an established time before each payroll, which will vary by bank or savings institution and according to whether an employee is new or already on the direct deposit system, the unit must provide the bank or savings institution with a schedule showing the identification number and net pay amount for each employee. In most cases, a copy of the unit's payroll check register would suffice. The bank or savings institution will use this schedule to transmit the net pay information to a Federal Reserve Bank. On the payroll date, each employee's net pay amount will be credited to his/her bank account.

Using direct deposit has numerous benefits for both employers and employees. For employers, direct deposit results in increased productivity, since employees do not have to leave work on payday to deposit their payroll checks. In addition, payroll costs are generally reduced because a unit would avoid the accounting and banking costs associated with reissuing lost payroll checks and issuing stop payment orders. Finally, direct deposit is essentially error-free. For employees, direct deposit is a safe and reliable way of receiving payment. If an employee is sick or away on vacation on the payroll date, the net pay amount is still deposited into his/her bank account. Before initiating a direct deposit program, a unit should make sure that its employees understand the major benefits of direct deposit and how the program operates. In addition, a unit should assess the level of employee participation, if direct deposit is to be optional. For more information about starting a direct deposit program, local officials should contact a bank or savings institution.

### **Payment of Taxes and Preparation of Payroll Tax Returns**

#### **Deposit Schedules**

There are two federal deposit schedules - monthly or semiweekly - for determining when you deposit social security, Medicare, and withheld income taxes. These schedules tell you when a deposit is due after a tax liability arises. Prior to the beginning of each calendar year, you must determine which of the two deposit schedules you are required to use. Complete information can be found in the annual IRS Circular E, Employer's Tax Guide.

The deposit schedule you must use is based on the total tax liability (not reduced by any advanced earned income credit payments) reported on your Forms 941 from the previous fiscal year (July 1 through June 30) period. If you reported \$50,000 or less of taxes for the previous fiscal year you are a monthly scheduled depositor; if you reported more than \$50,000 you are a semiweekly scheduled depositor. There are two exceptions to these rules:

- 1) If you accumulate less than a \$1,000 tax liability during a quarterly return period, interim deposits are not required, and you may pay the tax with the 941 return for the period. If you are unsure that you will accumulate less than \$1,000, deposit under the appropriate rules so that you will not be subject to failure to deposit penalties.
- 2) If you accumulate a tax liability of \$100,000 or more on any day during a deposit period, you must deposit the tax by the next banking day, whether you are a monthly or semiweekly schedule depositor.

Under the monthly deposit schedule, deposit Form 941 taxes on payments made during a month by the 15th day of the following month. Under the semiweekly deposit schedule, deposit Form 941 taxes on payments made on Wednesday, Thursday, and/or Friday by the following Wednesday. You must deposit amounts accumulated on payments made on Saturday, Sunday, Monday and/or Tuesday by the following Friday.

#### **Deposit Rules for Federal Unemployment (FUTA) Taxes**

Employers should figure FUTA taxes quarterly and should deposit any amount due by the last day of the first month after the quarter ends. The FUTA tax rate is 6.2%. The tax applies to the first \$7,000 amount you pay each employee as wages during the year. Generally, you can take a credit against your FUTA tax for amounts you paid into state unemployment funds. This credit cannot be more than 5.4% of taxable wages. If you are entitled to the maximum 5.4% credit, the FUTA tax rate after the credit is .8%. The total tax is figured by multiplying .008 by that part of the first \$7,000 of each employee's annual wages that were paid during the quarter. If this amount plus any undeposited amount from a previous quarter is more than \$100, it must be deposited during the first month after the quarter. However, if it is less than \$100, it should be added to the amount for deposit for the next quarter.

Salaries and wages of employees of political subdivisions of State governments are exempt from federal unemployment taxes. Units can elect to pay State unemployment benefits on a reimbursement basis, thereby omitting the payment of State unemployment taxes (G.S.96-9 (a)(4)). However, quarterly reporting to the State Employment Security Commission of salaries and wages paid is still required.

In the event that an employee loses his job with a unit of government and meets the eligibility requirements to receive unemployment benefits, a unit that has elected the reimbursement basis will be billed annually, in November, by the Employment Security Commission (ESC) for 100% of the

benefits paid to the claimant. Benefits are calculated from the highest paid quarter of the first four quarters of the last five completed calendar quarters prior to the quarter in which a claim for benefits is filed. The actual weekly benefit is the total wages received in the highest quarter divided by 26. Benefits are paid weekly for a minimum of 13 and a maximum of 26 weeks. The maximum weekly benefit is established by law, and for the year beginning August 1, 1999, the maximum was \$356. Benefits are also payable to workers whose hours are reduced below 60% of the customarily scheduled work hours, referred to as "temporary layoff". The benefit amount in this "attached status" is adjusted for any wages received from less than full-time employment.

When units prepare their annual budgets, the estimated costs of any unemployment benefits should be included among budgeted expenditures. If a unit receives a bill from the ESC that is higher than estimated or was not anticipated when preparing the budget, the budget should be amended to include those costs.

Units that experience financial difficulties may consider reducing costs by workforce reductions or cutbacks in work hours. When determining the best steps to take, units should take into consideration the unemployment benefits that they will be required to pay if employees are laid off or if hours are reduced by more than 60%. The costs of laying off employees will also include payments for any accrued leave. If a position is no longer deemed necessary and the employee will not be replaced, a permanent layoff of an employee is probably the right choice. If the position is necessary and will eventually be refilled once the unit's financial difficulties are overcome, it may be in the unit's best interest to reduce work hours rather than laying off the employee. In addition to the unemployment benefits and accrued leave costs, the unit should also consider the value of the experience lost with the laid-off employees.

### **Depositing Federal Taxes**

Electronic deposit requirement - Certain taxpayers that deposited more than \$200,000 in aggregate federal depository taxes during the calendar year 1998 will be subject to the 10-percent failure to deposit penalty under section 6656 of the Internal Revenue Code if those taxpayers fail to make deposits by electronic funds transfer (EFT).

The Internal Revenue Service will not, however, impose the section 6656 penalty on taxpayers that did not deposit more than \$200,000 in aggregate federal depository taxes during calendar year 1998 solely for failure to deposit by electronic funds transfer. Taxpayers that first exceed the \$200,000 threshold in 1999 or a subsequent year will similarly be required to deposit by EFT after a one-year grace period. A taxpayer that exceeds the threshold will not be permitted to resume making paper coupon deposits if

its deposits fall below \$200,000 in a subsequent year. Taxpayers that were required to deposit by EFT under earlier regulations will be given a fresh start and will not be required to use EFT unless they exceed the \$200,000 threshold in 1998 or a subsequent calendar year.

The Electronic Federal Tax Payment System (EFTPS) must be used to make electronic deposits. If you are required to make deposits by electronic funds and fail to do so, you may be subject to the 10% section 6656 penalty. Taxpayers who are not required to make electronic deposits may voluntarily participate in EFTPS. To enroll in EFTPS call 1-800-555-4477 or 1-800-945-8400. For general information about EFTPS, call 1-800-829-1040.

Effective July 1, 1998, if your net taxes for the quarter are less than \$1,000 you are not required to make monthly deposits for that quarter and may pay the taxes with Form 941.

If you are not making deposits by EFTPS or making payments with Form 941 (for net tax liabilities less than \$1,000), use Form 8109, "Federal Tax Deposit Coupon", to deposit employment taxes and most other types of federal taxes that must be deposited. However, deposit coupons should not be used to pay delinquent taxes that have been assessed by the IRS. These payments should be sent directly to the regional Internal Revenue Service Center along with a copy of any related notice sent by the IRS.

Employers receive a coupon book after they apply for an employer identification number. The coupons are preprinted with your name, address, and EIN. Also, the coupons have entry boxes for indicating the type of tax and the tax period against which the deposit is to be applied. It is very important to clearly mark the correct type of tax and tax period on each deposit coupon since this information is used by the IRS to credit an employer's account. The original Form 8109 must be used. A copy of this form is not acceptable to the IRS. The IRS will keep track of the number of FTD coupons you use and automatically send you additional coupons when you need them. If you do not receive your new supply of FTD coupons, call 1-800-829-1040.

Employers should deliver or mail each deposit coupon and tax payment covering the taxes to be deposited to an authorized depository or to the regional Federal Reserve Bank (FRB) or branch. An authorized depository is a financial institution (e.g., a commercial bank) that is authorized to accept Federal tax deposits. The instructions in the coupon book should be followed. The check or money order should be made payable to the depository or FRB where the deposit is made. Also, to ensure proper crediting, employers should include their identification number, type of tax, and tax period to which the tax applies on the check or money order.

Each quarter, all governmental units who pay wages subject to income tax withholding or social security and Medicare taxes must file Form 941, "Employer's Quarterly Federal Tax Return". Employers with multiple departments/divisions must file only one Form 941 per quarter. Filing more than one return may result in processing delays and may require correspondence with the IRS.

In certain cases, amounts reported as Social Security and Medicare taxes on Form 941 must be adjusted to arrive at the correct tax liability. Current period adjustments are reported on line 9 of Form 941. Prior period errors can be corrected by making an adjustment on Form 941 for the quarter during which the error was discovered. The adjustment increases or decreases your tax liability for the quarter for which it is reported and is interest free.

If you receive repayments from employees for wages paid in error during a prior quarter in the current year, report adjustments on Form 941 to recover income tax withholding and social security and Medicare taxes for the repaid wages. Report the adjustments on Form 941 for the quarter during which the repayment occurred. If you receive repayments for wages paid during a prior year, report an adjustment on Form 941 for the quarter during which the repayment was made to recover the social security and Medicare taxes. Instead of making an adjustment on Form 941, you may file a claim for these taxes using Form 843. You may not make an adjustment for income tax withholding because the wages were paid during a prior year. You must also file Form W-2c with the Social Security Administration to correct Social Security and Medicare wages and tax. Do not correct wages on Form W-2c for the amount paid in error. Give a copy of Form W-2c to the employee.

#### **Federal Penalties and Interest**

Penalties may apply if you do not make required deposits on time. The penalties do not apply if any failure to make a proper and timely deposit was due to reasonable cause and not to willful neglect. For amounts not properly or timely deposited, the penalty rates are:

- 2%    Deposits made 1 to 5 days late.
- 5%    Deposits made 6 to 15 days late.
- 10%   Deposits made 16 or more days late. Also applies to amounts paid to the IRS within 10 days of the date of the first notice the IRS sent asking for the tax due.
- 10%   Deposits made at an unauthorized financial institution, paid directly to the IRS, or paid with your tax return (except when you have applied for an EIN, but **have not** received it, or are

paying a net tax liability of less than \$1000 for the return period).

- 10% Amounts subject to electronic deposit requirements but not deposited using the Electronic Federal Tax Payment System (EFTPS).
- 15% Amounts still unpaid more than 10 days after the date of the first notice the IRS sent asking for the tax due or the day on which you receive notice and demand for immediate payment, whichever is earlier.

Units should be certain that payments are made on time so that costly penalties can be avoided. If penalties are incurred, payment should not be charged against payroll costs, but against the costs of financial administration. Budgets should be amended to reflect this additional cost.

### **Depositing and Reporting State Taxes**

North Carolina law requires withholding of State income tax from salaries and wages. Unlike federal taxes, North Carolina does not use a depository system for State income tax withheld. The State tax withheld is deemed by law to be held in trust by the employer for the State of North Carolina. Due date requirements for reporting and paying the tax depend on the amount of tax withheld each month. The North Carolina Department of Revenue will determine the due date requirement after an employer files Form NC-1, "Application for Withholding Identification Number". Once registered, an employer will receive preaddressed tax deposit forms from the Department of Revenue. The tax deposit requirements, which vary according to the amount of taxes withheld, are summarized as follows:

Less than \$500 per month - Employers who average withholding less than \$500 per month must file a return on Form NC-5, "Employers Quarterly Report of North Carolina Income Tax Withheld," for each calendar quarter. The quarterly report and payment are due by the last day of the month following the end of the calendar quarter.

At least \$500 but less than \$2,000 per month - Employers who average withholding at least \$500 but less than \$2,000 of State income tax per month must file a monthly return on Form NC-5M, "Employers Monthly Report of North Carolina Income Tax Withheld". All monthly reports and payments are due by the fifteenth day of the month following the month in which the tax was withheld; except the report and payment for the

month of December are due by January 31. No quarterly report is required when filing monthly.

\$2,000 or more per month - Employers whose average State income tax withholding is \$2,000 or more per month (accelerated filers) must make payments, on the same dates federal tax deposits are required, using Form NC-5P, "North Carolina Income Tax Withholding Payment Voucher". The only **exception** is that North Carolina law does not include the provision of federal law requiring next day deposit on withholding amounts of \$100,000 or more. The tax deposits must be postmarked by the required due date. In addition, accelerated filers must file a quarterly return on Form NC-5Q, "North Carolina Quarterly Income Tax Withholding Return". The quarterly return is due by the last day of the month following the end of the calendar quarter.

Annually, the Department of Revenue will analyze each employer's average withholding amount to determine if its withholdings should be deposited more or less frequently. However, an employer must continue its current payment and reporting schedule until it receives written authorization from the Department of Revenue to change to another schedule.

#### **State Penalties and Interest**

The penalty for failure to timely file a withholding return is 5% of the tax due per month (maximum 25%). A penalty of 10% is required for failure to withhold or pay the tax when due. Interest is due from the time the tax was due until paid. Criminal penalties are provided for willful failure or refusal to withhold, file a return, or pay tax when due. Finally, responsible employees can be held personally liable for unpaid State taxes. The unpaid tax may be assessed against the responsible employees if an employer has failed to collect, or pay over income tax withheld or required to be withheld.

#### **Preparation of Other Payroll Tax Returns**

Periodically, employers must file payroll tax returns, unemployment tax returns, and Wage and Tax Statement information with the federal government and the State of North Carolina. The following is a summary of the basic filing requirements, excluding the State payroll tax returns, which were discussed in the previous section.

Many of the required forms, instructions, and publications can be downloaded from the Internet. The Internet Web Sites for the Internal Revenue Service and the State Department of Revenue are [www.irs.ustreas.gov](http://www.irs.ustreas.gov). and [www.dor.state.nc.us](http://www.dor.state.nc.us), respectively.

Form 941: Generally, all employers that are subject to income tax withholding or social security taxes must file quarterly Form 941, "Quarterly Return of Withheld Income Tax and Social Security Tax" with the IRS. However, governmental employers that are not covered by a Section 218 agreement and that deposit withheld income tax and only the Medicare portion of the social security tax, should use Form 941E. The returns and any tax payments are due by the last day of the month following the end of the calendar quarter. However, if all taxes were deposited for the quarter, the return may be filed by the tenth day of the second month following the quarter. Also, the IRS may charge penalties if the return is not filed when required.

Form 940 or Form 940EZ: By January 31 of the following calendar year, employers must file Form 940 or Form 940EZ, "the Federal Unemployment (FUTA) Tax Return," with the IRS and must deposit or pay the balance of any tax. However, if all FUTA taxes were deposited when due, employers file by February 10. The total FUTA tax is 6.2 percent of the first \$7,000 of wages paid to each employee during the calendar year. Generally, employers can take a credit against their FUTA tax for amounts paid into State unemployment funds. This credit cannot be more than 5.4 percent of taxable wages.

Form 945: By January 31 of the following calendar year, if employers withheld Federal income taxes on nonpayroll payments, such as pension benefits, annuities, or backup withholding on payments to contractors, employers must file Form 945, "Annual Return of Withheld Federal Income Tax," with the IRS and must deposit or pay the balance of any tax. However, if all withheld taxes were deposited when due, employers file by February 10.

Form W-2 and Form W-3: Employers must provide a Form W-2, "Wage and Tax Statement", to each employee from whom it withheld income tax and to each employee from whom it would have withheld income tax if the employee had claimed no more than one withholding allowance, or had not claimed exemption from withholding on Form W-4. Also, employers must provide a Form W-2 to any employee whose wages were subject to social security taxes. Form W-2 must be provided to employees by January 31 of the following calendar year. In addition, by the last day of February of the next calendar year or the following Monday if that day falls on a weekend, Copy A of all Forms W-2 along with Form W-3, "Transmittal of Income and Tax Statements," must be sent to the Social Security Administration. The IRS may charge substantial penalties for not providing Form W-2 as required. Each time

an employer does not provide a Form W-2 when required, it may be assessed a \$50 penalty. The maximum penalty is \$100,000 per calendar year. Also, each time an employer fails to provide correct information on a Form W-2, it may be assessed a \$5 penalty. This maximum penalty is \$20,000 per calendar year. For more information about reporting on Form W-2, see IRS Circular E or consult your local auditor.

[NOTE: the total of all wages reported on each Form W-2 should agree with the total wages reported on Form 940 and Form 941 filed during the year.]

Forms NC-3, NC-3M, NC-3A: On or before February 28, employers must file the "Annual Reconciliation of North Carolina Income Tax Withheld from Wages or Personal Services Income" along with the Revenue Department's copies of each wage and tax statement and Forms NC-1099PS for the preceding calendar year. Quarterly filers use NC-3, monthly filers use Form NC-3M, and accelerated filers use Form NC-3A. Attach an adding machine tape of the total amount of North Carolina tax withheld as shown on the statements. You may submit Form NC-2 information on magnetic tape in lieu of paper copies.

Form NCUI 101: Employers must file quarterly Form NCUI 101, "Employer's Quarterly Tax and Wage Report". The return and any amount due must be filed with the Employment Security Commission (ESC) by the last day of the month following the end of the calendar quarter. If the required due date is not met, the ESC can assess a late filing penalty, a late payment penalty, and interest. For additional information, contact the Employment Security Commission.

### **Retirement System Contributions**

Units that participate in a State-administered retirement system must withhold retirement from the gross pay of eligible employees and make remittances to the Retirement Division of the Department of State Treasurer. The State-administered retirement systems are 1) the Local Governmental Employees' Retirement System for participating municipalities, counties, public authorities, and other entities of local government, and 2) the Teachers' and State Employees' Retirement System for participating local education agencies. The contribution rate for each employee is currently 6 percent of gross pay. The contribution rate for each participating unit is determined annually by the State's actuary. Each participating unit will receive notification annually from the Retirement Division of its required contribution rate. Units must remit the employer and employee retirement contributions monthly using Form 111, "Monthly Report of Retirement Contributions," or a computer generated equivalent. The report and payment must be submitted to the Retirement Division by the fifth State government working day of the following month. Effective February 1, 1992, the General Statutes (Chapter 585 of the

1991 Session Laws) require that penalties be assessed against those units that do not pay contributions when due.

The penalty is an amount equal to one percent per month of the total past due employee and employer contributions, with a minimum penalty of \$25.00. Employers who are assessed a penalty will be billed by the appropriate retirement system.

The Retirement Systems Division currently offers STEPS-IN, which allows eligible participating entities to remit payments electronically to a State agency. Through this system a unit's monthly retirement contributions payment may be made. STEPS-IN offers the reporting unit the ability to control the effective date of a payment, thereby providing assurances that the payment is made timely in order to avoid the 1% payment penalty provided by G.S. 128-30, and eliminating the necessity of the early mailing of payments by check. Electronic STEPS-IN disbursements must comply with the pre-audit requirements of G.S. 159-28, as appropriate. Questions regarding STEPS-IN may be addressed to Roscoe Perry, in the Accounting Section of the Retirement Systems Division at 919-508-5343.

#### **Other Payroll Deductions**

Units routinely withhold amounts other than taxes and retirement from the gross pay of employees. Deductions are made for items such as employee parking, optional insurance, employee fitness programs, credit union savings, and 401(k) plan contributions. These deductions must be authorized by employees, and signed authorization forms should be included in the employee personnel files.

#### **Other Payments (Board Member Pay, Election workers, Special Separation Allowance, etc.)**

For tax withholding purposes, the IRS considers an elected official of a local government to be an employee and not an independent contractor. Therefore, payments made to a board member for serving on the governing board are subject to FICA and income tax withholding and must be reported on Form W-2. A FICA exception applies to those officials (and other employees) who are members of their employers' retirement systems, are not otherwise covered by a section 218 agreement, and were hired prior to 3/31/86. "Section 218 agreement" refers to the agreements that States entered into with the Federal government to provide Social Security coverage to their employees or employees of their political subdivisions. This was necessary as the initial Social Security Act of 1935 did not include public employees. North Carolina's Section 218 agreement was initiated in 1951 and allowed political subdivisions to extend coverage to their employees. For additional information, refer to IRS Publication 963, Federal-State Reference Guide.

Election workers' compensation is exempt from income tax withholding and Federal unemployment taxes. It is also exempt from Social Security and Medicare taxes if under \$1000 and there is no section 218 Social Security Agreement. Form W-2 should be filed if \$600 or more is paid in compensation.

Although the special separation allowance is reported as a pension trust fund in the financial statements of local governments, the IRS considers these payments to be wages. Therefore, payments made to a qualified law enforcement officer for the special separation allowance must be handled in the same manner. For additional information, contact the Retirement Division of the Department of State Treasurer at (919)508-5380.

Other payments which are treated as compensation for tax withholding include certain fringe benefits such as personal use of official vehicles, discounts on property or services, memberships in country clubs or other social clubs, life insurance premiums for coverage over \$50,000, sick or disability pay. Refer to IRS Publication 15 Circular E, Employer's Tax Guide for complete details.

### **Filing on Magnetic Media or Electronically**

#### Internal Revenue Service Filing

In general, employers that file 250 or more information returns (W-2, 1099) with the IRS must file using magnetic media (or electronically). This requirement applies separately to each type of form. However, if filing on magnetic media would create an undue hardship, employers may be able to receive a waiver from the IRS for a period up to one tax year. To obtain a waiver, Form 8508, "Request for Waiver from Filing Information Returns on Magnetic Media," must be filed at least 90 days before the due date of the returns.

#### North Carolina Filing

If you prepare withholding statements by computer, you may file a printout of the information with your annual reconciliation, provided you can produce the information on a list in the manner and in the order required by the Department. If you are interested, request a copy of Form NC-57, Computer Printout, in lieu of Form NC-2.

The information on forms NC-2 and NC-1099PS may also be submitted on magnetic tape or cartridge tape in lieu of paper reports. Employers who wish to furnish such information on magnetic tape should request Form DP-42, "NC-2 Magnetic Tape Specifications". Employers who wish to report the information on cartridge tape should contact the Department for cartridge tape specifications. The

Department of Revenue cannot process withholding information stored on computer diskettes; however, the Department of Revenue will accept a computer printout of the information, provided it reflects all of the required information for each taxpayer. Information submitted on magnetic or cartridge tapes should be labeled with the following information: unit name, State withholding ID number, tax year, and an indicator that the tape contains withholding information. The tapes should be sent to the Department of Revenue, Withholding Tax Section - Support Services, P. O. Box 25000, Raleigh, NC 27640-0001.

Employers with 250 or more employees will be required to file on magnetic media that portion of Form NCUI 101, "Employer's Quarterly Tax and Wage Report," that contains the name, social security number, and gross wages of each individual.

### **Other Payroll-Related Issues**

This section will discuss other payroll-related issues that are receiving more scrutiny from the IRS. In particular, the IRS is focusing more attention into the areas of the employee vs. independent contractor issue and Form 1099 reporting. Both of these areas have significant financial implications to governmental units. Finally, this section will include a summary of the basic provisions of the Fair Labor Standards Act and the Family and Medical Leave Act.

### **Employee vs. Independent Contractor**

The IRS and the N.C. Department of Revenue are concerned that some units of government may be misclassifying certain individuals as independent contractors instead of as common-law employees. The differences between these classifications are often not clear; however, the tax consequences of such a misclassification could be significant to a unit of government. For wages paid to common-law employees, an employer must withhold income taxes and social security taxes and must pay unemployment taxes and its share of social security taxes. In addition, if employees are misclassified, the IRS and the N.C. Department of Revenue can assess substantial penalties. For payments made to independent contractors, an employer is generally not required to withhold and pay taxes, except for nonresidents providing entertainment or performance services, as mentioned below, and vendors who do not furnish Tax Identification Numbers (TINs). However, a unit is required to file information returns (Form 1099-MISC) with the IRS for accumulated payments made to an independent contractor of \$600 or more during a year. The independent contractor and common-law employee classifications are summarized as follows:

Independent Contractor - is an individual who follows an independent trade, business, or profession. This category includes lawyers, contractors, subcontractors, accountants, auctioneers, and others who offer their services to the general public. Generally, an individual is an independent contractor if the employer has the right to control or direct only the results of the work and not the means and methods of accomplishing the results.

Common-law Employee - is an individual who performs services that are subject to the will and control of the employer, as to both what must be done and how it must be done. Two usual characteristics of this type of employment relationship are that the employer has the right to discharge the employee and the employer supplies the employee with tools and a place to work. If a common-law relationship exists, it makes no difference how the employer describes this relationship. It makes no difference if the employee is called an employee, partner, agent, or independent contractor. Also, it does not matter how the payments are measured, how they are made, what they are called, or if the individual is employed full-time or part-time.

Common-law rules. To determine whether an individual is an employee or an independent contractor under the common law, the relationship of the worker and the business must be examined. All evidence of control and independence must be considered. In any employee-independent contractor determination, all information that provides evidence of the degree of control and the degree of independence must be considered.

Facts that provide evidence of the degree of control and independence fall into three categories: behavioral control, financial control, and the type of relationship of the parties as shown below.

Behavioral control. Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of:

- a. instructions the business gives the worker
- b. training the business gives the worker

Financial control. Facts that show whether the business has a right to control the business aspects of the worker's job include:

- a. the extent to which the worker has unreimbursed business expenses
- b. the extent of the worker's investment
- c. the extent to which the worker makes services available to the relevant market
- d. how the business pays the worker
- e. the extent to which the worker can realize a profit or incur a loss

Type of relationship. Facts that show the parties' type of relationship include:

- a. written contracts describing the relationship the parties intended to create
- b. whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay
- c. the permanency of the relationship
- d. the extent to which services performed by the worker are a key aspect of the regular business of the company

Determining whether a worker is an employee or an independent contractor is often not an easy task. In doubtful cases, a unit should have the IRS make this determination by filing Form SS-8, "Determination of Employee Work Status for Purposes of Federal Unemployment Taxes and Income Tax Withholding". In addition, a unit should consult with its legal counsel and/or local auditor.

#### Costs of Misclassification

If the IRS determines that a unit's independent contractors are actually employees, the costs could be significant. First, the unit would be penalized for not withholding income taxes. This liability would be equal to 1.5 percent of the wages paid plus 20 percent of the FICA that the employee should have paid. Additionally, the employer would have to remit the unpaid amounts of the employer portion of FICA and unemployment taxes, both federal and State.

#### Relief Provisions

If an employer has a reasonable basis for not treating a worker as an employee, you may be relieved from having to pay employment taxes for that worker. To get this relief, you must file all required Federal information returns on a basis consistent with your treatment of the worker. You must not have treated any worker holding a substantially similar position as an employee for any periods beginning after 1977.

However, in the future, use of these protective regulations may be greatly curtailed. As a result, units should closely monitor their employment relationships and may need to consider reclassifying certain independent contractors rather than risk having to pay back taxes and penalties.

### **Form 1099 Reporting**

During the course of business, a unit may make certain non-wage payments that must be reported to the IRS. These payments are usually reported on IRS Form 1099-MISC, "Statement for Recipients of Miscellaneous Income". A Form 1099-MISC must be completed for every "reportable payee" that receives the following types of payments during a calendar year:

- 1) Royalties of \$10 or more;
- 2) Rent of \$600 or more (except rental payments to real estate agents;
- 3) Prizes or Awards (not for services) of \$600 or more;
- 4) Accumulated payments of \$600 or more to suppliers of health and medical services, or to attorneys (including corporations);
- 5) Accumulated payments of \$600 or more to persons not treated as employees (e.g., independent contractors) for services performed as a trade or business.

A "reportable payee" is defined as any individual, combination of individuals; sole proprietorship; partnership; or trust. Payments to corporations, Section 501 not-for-profit organizations, and other tax-exempt organizations are generally not required to be reported. However, payments to medical service corporations for the provision of health care services must be reported. Examples of non-wage payments that may need to be reported include 1) fees paid to attorneys and accountants for professional services, 2) travel reimbursements paid to a nonemployee for which the nonemployee did not account to the unit, and 3) taxable fringe benefits for nonemployees.

### Filing Requirements

Each "reportable payee" who receives any of the above payments must be provided with a Form 1099-MISC by January 31 of the following year. Also, copies must be filed with the IRS by February 28 of the same year. Form 1096, "Annual Summary and Transmittal of U.S. Information Returns" must accompany the IRS copies. Such nonwage payments do not have to be reported to the N.C. Department of Revenue if such amounts are reported to the IRS. There are two exceptions. One is that the sale of real property located in North

Carolina by nonresidents must be reported on Form NC1099-NRS, "Nonresident Property Sales," regardless of any requirement to report the sale to the IRS. The other is for nonresident personal services income and tax withheld for entertainment or performance services performed in North Carolina and reported on Form NC1099-PS.

#### Payments Exempt From Requirements

Payments that do not require an IRS Form 1099-MISC include the following:

- 1) Payments for merchandise and inventory, including freight, storage, and similar charges;
- 2) Payments for utilities, such as electricity, gas, oil, and water;
- 3) Payments for telephone, telegraph, and similar charges;
- 4) Payments of rent to real estate agents;
- 5) Payments to employees for traveling and other business expenses to the extent that the employees account to the unit for such expenses; and,
- 6) Payments to informers for information about criminal activities, but only if these payments are made by federal, State, or local agencies, or by not-for-profit organizations described in Section 501(C)(3) of the Internal Revenue Code.

#### Identifying "Reportable Payees"

To comply with the above requirements, a unit must first identify each of its "reportable payees". This step is best accomplished by sending each vendor the "Vendor Tax Identification Number Verification Form", which is included in Appendix A. This form is used to document which vendors are subject to informational reporting. The form prompts the vendor for its tax identification number (TIN) and business designation (e.g., individual, corporation, etc.). In addition, a short letter from the unit, which is signed by the finance officer, should be attached to the form. The letter should explain the purpose of the form and request that the form be completed and mailed back to the unit. A unit should mail the letter and verification form to each of its vendors that have received or will receive any payments. Once completed verification forms are received, a unit should be able to identify those vendors that are subject to informational reporting. Finally, a unit should consider adopting a policy prohibiting payment to any vendor that does not submit a completed verification form. Such a policy would help ensure a unit's compliance with the informational reporting requirements.

### Backup Withholding

In certain cases, the IRS may require that a unit withhold 31 percent of a vendor's payment. Backup withholding is required when a vendor receives payments that are subject to 1099 reporting, but does not furnish a TIN to the unit. In addition, backup withholding is required if the IRS notifies a unit that the vendor supplied an incorrect TIN. A unit can use Form W-9, "Request for Taxpayer Identification Number and Certification," or the verification form in Appendix A to request a TIN from a vendor. Any backup withholding amounts should be reported on Form 945, "Annual Return of Withheld Federal Income Tax". The N.C. Department of Revenue does not require any backup withholding of State income tax.

### Penalties

Units that fail to comply with the informational reporting requirements are subject to substantial penalties. These penalties include \$50 for each Form 1099 not filed with the taxpayer; \$50 for each Form 1099 not filed with the IRS; and \$50 for each Form 1099 that was not filed on the correct media, up to a maximum of \$250,000. In addition, the IRS can assess penalties for furnishing incorrect information and can assess a fine of \$100 per return with no limit if the reporting requirements are intentionally disregarded. Finally, a unit could be assessed a 100 percent penalty for failure to withhold 20 percent of the pay of an independent contractor if the contractor was subject to informational reporting, did not provide a federal TIN to the unit, and failed to pay income taxes. IRS representatives have indicated to this office that they will be more likely to enforce these penalty provisions against units of government in the future.

### **Withholding From Nonresidents for Personal Services**

Effective January 1, 1998, North Carolina income tax is required to be withheld from non-wage compensations paid to nonresidents for personal services rendered in this State. The four percent (4%) withholding requirement applies to payers who, in the course of a trade or business, pay more than \$1,500 of non-wage compensation to a nonresident individual or to a nonresident entity for services performed in North Carolina in connection with a performance, an entertainment or athletic event, a speech, or the creation of a film, radio, or television program. Payments related to the construction or repair of a building or highway are not subject to this requirement.

Exceptions to Withholding

No tax is required to be withheld if:

- 1) the entity is a corporation or a limited liability company that has obtained a certificate of authority from the Secretary of State. The payer must obtain from the entity and retain in its records the entity's identification number issued by the Secretary of State. If payments are no longer made to a entity, the IRS requires records to be retained for four years after the last payment was made.
- 2) an entity that is exempt from North Carolina corporate income tax under G.S. 105-130.11. This includes any organization that is exempt from federal income tax under the Internal Revenue Code. The entity must provide documentation of its tax exemption to the payer, such as a copy of the organization's federal determination letter of tax exemption or a copy of a letter of tax exemption from the Department of Revenue.
- 3) an entity is a partnership and has a permanent place of business in this State. The payer must obtain from the partnership and retain in its records the partnership's address and taxpayer identification number.
- 4) personal services income is paid to an individual who is an ordained or licensed member of the clergy or who is a resident of North Carolina. The payer must obtain from any individual from whom the payer does not withhold because the individual is a resident of this State the individual's address and social security number and retain this information in its records. Records should be maintained for four years after the payee becomes inactive.

More information on this subject may be obtained from the Department of Revenue directive number PD-98-3. You may call the Personal Taxes Division of the Department of Revenue at 919-733-3565 or visit their web site at [www.dor.state.nc.us](http://www.dor.state.nc.us).

**Dual Office Holding**

G.S. 128-1.1 allows dual office holding. Any person holding an appointive office, place of trust or profit in State or local government may hold concurrently one other appointive

office, place of trust or profit, or an elective office in either State or local government

According to G.S. 160A-158 neither the mayor nor any member of the council shall be eligible for appointment as head of any city department or as acting or interim head of a department. The exception is in cities having a population of less than 5,000 according to the most recent official federal census. Then the mayor and any member of the council shall be eligible for appointment by the council as department head or other employee, and may receive reasonable compensation for such employment, notwithstanding any other provision of law.

### **Fair Labor Standards Act**

The Fair Labor Standards Act (FLSA) establishes minimum wage, overtime pay, child labor, and recordkeeping standards that affect full-time and part-time workers in the private and public sectors. Also, the FLSA has special rules that apply to State and local government employment involving compensatory time off in lieu of cash overtime pay, occasional or sporadic employment, fire protection and law enforcement activities, and volunteer services. Most employees are covered by the FLSA, but some are not subject to every requirement of the act. The FLSA identifies two groups of employees: *exempt* and *nonexempt*. Exempt employees (e.g. professional, executive, administrative, elected officials and their immediate staff) are not subject to the FLSA's requirements of minimum wage and overtime provisions. Exempt employees are subject to equal pay and record keeping provisions. Guidelines for the determination of exempt status can be found on page 35.

### Basic Wage Standards

Under the FLSA, covered non-exempt workers are entitled to a minimum wage of not less than \$5.15 per hour [**Note: Because the minimum wage is subject to change, units should be alert to any revisions to the FLSA that adjust the minimum wage amount**]. After 40 hours of work in a workweek, such workers must receive overtime pay at a rate not less than one and one-half times their regular rates of pay. These wages must be paid on the date of the regular payday for the period. Deductions from wages for items such as employer-required uniforms or merchandise shortages are not legal to the extent that these deductions reduce the wages of employees below the required minimum wage or reduce the amount of overtime pay due under the FLSA. Independent contractors are not employees under the FLSA, and are not subject to the minimum wage and overtime provisions. While the FLSA does set basic minimum wage and overtime pay standards, it does not regulate a number of other employment practices. For example, the FLSA does not require the following:

- 1) Vacation, holiday, severance, or sick pay;
- 2) Meal or rest periods, holidays off, or vacations;
- 3) Premium pay for weekend or holiday work;
- 4) Pay raises or fringe benefits; and,
- 5) A discharge notice, reason for discharge, or immediate payment of final wages to terminated employees.

Also, the FLSA does not limit the number of hours in a day or days in a week that an employee may be required to work, if the employee is at least 16 years old. These employment practices are determined by an agreement between the employer and the employee.

#### Overtime Pay Exemptions

The FLSA provides State and local government employers with certain exemptions from the overtime pay requirements. These exemptions pertain to 1) the use of compensatory time in lieu of cash overtime pay, 2) occasional or sporadic employment, and 3) small employers.

#### Compensatory Time

A special rule in the FLSA gives State and local government employers the option of providing compensatory time to their employees in lieu of monetary overtime compensation. If this option is used, the following guidelines must be followed:

- 1) The employer and the employee must arrive at an understanding or agreement on the use of compensatory time before any work is performed;
- 2) The employee must not have accrued compensatory time in excess of the limit allowed by the FLSA;
- 3) Compensatory time must be given at the premium rate of not less than one and one-half hours for each hour of employment for which overtime compensation is required;
- 4) Employees working in a public safety activity, an emergency response activity, or a seasonal activity may not accrue more than 480 hours of compensatory time (320 actual hours) for hours worked;
- 5) For any other work, employees may not accrue more than 240 hours of compensatory time (160 actual hours) for hours worked;
- 6) An employee who accrues the maximum amount of compensatory time (480 or 240 hours) must receive cash payments for any additional hours of overtime work;

- 7) Cash payments of compensatory time must be paid at the regular rate earned by the employee at the time the employee receives such payment;
- 8) Upon termination of employment, an employee must be paid for unused compensatory time at a rate of compensation not less than
  - a) the average regular rate received by the employee during the last 3 years of employment, or
  - b) the final regular rate received by the employee, whichever is higher; and
- 9) An employee who requests the use of compensatory time must be permitted to use such time within a reasonable period, if the use of compensatory time does not unduly disrupt the operations of the unit.

#### Occasional or Sporadic Employment

The FLSA provides that State and local government employees can work "occasionally or sporadically" at another job for the same public agency, without requiring the employer to combine the hours from both jobs in determining the overtime liability. However, to use this exemption, the employee must work at the other job solely at his/her option, and the other job must be on a part-time basis. Also, the employee's other job must be in a different capacity from his/her regular job. For example, if a city bookkeeper occasionally referees basketball games at night for a city basketball league, the hours worked as a referee would not have to be combined with the employee's regular hours for the purpose of determining overtime.

#### Small Employer Exemption

The FLSA [section 13(b)(20)] provides a complete overtime exemption for fire protection and law enforcement employees of certain public agencies. To obtain this exemption, a public agency must employ, during a workweek, less than five employees in fire protection activities or law enforcement activities. This exemption applies on a workweek basis. In determining whether a public agency qualifies for this exemption, the fire protection activities and law enforcement activities are considered separately. Thus, if during a workweek, a public agency has less than five fire protection employees but has more than five law enforcement employees, it may only claim an exemption for the fire protection employees. Because this exemption applies on a workweek basis, a public agency may be subject to the overtime provisions in certain workweeks, but not in others.

Partial Overtime Exemption

The FLSA [section 7(k)] provides a partial overtime exemption for fire protection and law enforcement personnel who are employed by public agencies on a work period basis. Under this exemption, no overtime compensation is required until the number of hours worked exceed maximum hour standards. The U.S. Department of Labor established these standards, based on studies of the average hours in tours of duty for fire protection and law enforcement personnel. The maximum hours standard for work periods of 7 to 28 days is presented below in the following chart.

It is important to note that the partial overtime exemption applies only to fire protection and law enforcement personnel. Effective December 9, 1999 Public Law 106-151 amended Section 7 (k) of the FLSA to clarify the overtime exemption for employees engaged in fire protection activities. This amendment specifies that paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers are covered under the overtime exemption provisions for firefighters.

(continued on the next page)

Maximum hours standards

Work period (days)	Fire Protection	Law Enforcement
28	212	171
27	204	165
26	197	159
25	189	153
24	182	147
23	174	141
22	167	134
21	159	128
20	151	122
19	144	116
18	136	110
17	129	104
16	121	98
15	114	92
14	106	86
13	98	79
12	91	73
11	83	67
10	76	61
9	68	55
8	61	49
7	53	43

The number of hours worked should be counted for the entire work period. For example, if a firefighter's work period is 28 days, and he/she works 80 hours in each of the first two weeks, 52 hours in the third week, and does not work in the fourth week, no overtime compensation is required since the number of hours worked does not exceed 212.

A fire protection or law enforcement employee can engage in some non-exempt work that is not performed in conjunction with or as an incident to his/her primary activities, without jeopardizing the Section 7(k) or the Section 13(b)(20) exemptions. However, such non-exempt activities must not exceed 20 percent of the total hours worked by the

employee during the workweek or applicable work period. An individual, who spends more than 20 percent of his/her working time in non-exempt activities, is not considered an employee engaged in fire protection or law enforcement activities.

Exemptions from Minimum Wage and Overtime Pay

Under the FLSA, the following groups of employees are exempted from both the minimum wage and the overtime pay provisions:

- 1) Elected public officials, their immediate advisors, and appointees; and
- 2) Executive, administrative, and professional employees, which are defined as follows:
  - a) Executive employees - must earn a salary of \$155 or more a week, and the following conditions must be met:
    - 1) Primary duty (generally, 50% or more of time) must manage an enterprise, department, or subdivision thereof;
    - 2) Supervision - must customarily and regularly direct the work of two or more employees;
    - 3) Authority - must be able to hire and fire or suggest changes in status of other employees;
    - 4) Discretion - must customarily and regularly exercise discretionary powers;
    - 5) Non-exempt work - limited to 20% of executive's weekly hours worked, or 40% for executives of retail or service establishments.

Shorter Test - However, an employee will be deemed to have met all of the above requirements and will be considered an executive if the employee 1) earns a salary of \$250 or more a week, 2) has the same primary duty described above, and 3) supervises the work of two or more employees.

- b) Administrative employees - must earn a salary or fee of \$155 or more a week, except for academic administrative personnel, who must earn \$250 or more a week or the entrance salary for teachers in the school or educational institution by which employed. Also, the following conditions must be met:
  - 1) Primary duty (generally, 50% or more of time) must perform office or non-manual work relating to management policies, general business operations, or perform functions in the administration of a school or educational

institution in work directly related to academic instruction;

- 2) Other duties - must regularly and directly assist an executive or administrative employee; or must work under general supervision along specialized or technical lines that require special training, experience, or knowledge; or must execute specialized assignments under only general supervision;
- 3) Discretion - must customarily and regularly exercise discretion and independent judgment;
- 4) Non-exempt work - limited to 20% of the employee's weekly hours worked, or 40% for employees of retail or service establishments.

Shorter Test - However, an employee will be deemed to have met all of the above requirements and will be considered an administrative employee if the employee 1) earns a salary or fee of \$250 or more a week, 2) has the same primary duty described above, and 3) exercises discretion and independent judgment.

- c) Professional employees - must earn a salary or fee of \$170 or more a week, except this requirement does not apply to teachers employed by schools or other educational institutions. In addition, the following conditions must be met:

- 1) Primary duty (generally, 50% or more of time) must perform work requiring scientific or specialized study; or must perform original and creative work in a recognized artistic endeavor, which depends primarily on the invention, imagination, or talent of the employee; or must teach;
- 2) Other duties - must perform work that is predominantly intellectual and varied in nature and involves output that cannot be measured on the basis of standardized units of time;
- 3) Discretion - must consistently exercise discretion and judgment;
- 4) Non-exempt work - limited to 20% of the employee's weekly hours worked.

Shorter Test - However, an employee will be deemed to have met all of the above requirements and will be considered a professional employee if the employee 1)

earns a salary or fee of \$250 or more a week, 2) has the same primary duty described above, and 3) has work requiring the consistent exercise of discretion and judgment, or requiring invention, imagination, or talent in a recognized field of artistic endeavor.

As noted above, one of the most important factors used to determine whether an employee qualifies for the overtime and minimum wage exemption is that the employee must be paid on a "salary basis". In general, on a "salary basis" means that the amounts paid in a workweek cannot be subject to reduction because of variations in the quality or quantity of work performed. One test used by the U.S. Department of Labor to determine "salary basis" payment is whether an employee's pay is subject to reduction for time away from work of less than one day. This test has been recognized as an important factor in determining the line between exempt and non-exempt employees. However, this test does not work well in the public sector. Most public employers are required by statute or public policy to operate pay systems that require all employees to use accrued leave or incur a reduction in pay for absences from work. Thus, under the above test, all public employees, including managers who otherwise would clearly be exempt from the overtime requirements, could be considered non-exempt. As a result, the U.S. Department of Labor has adopted new regulations to eliminate this anomaly. Under the new rule, an otherwise exempt public sector employee who is paid according to a pay system that reduces earnings for time away from work of less than one day, will not be disqualified from exemption because of such a pay system. Furthermore, the exemption will not be lost because of budget-required furloughs that are not regular and recurring, except in the workweek in which such a deduction occurs.

In addition, the FLSA provides that individuals may volunteer their services to a State or local agency without being considered employees for the purposes of the minimum wage and overtime provisions of the FLSA. To be considered a volunteer, an individual must offer his/her services freely and without pressure from the employer. Also, the individual must not be employed by the same public agency to perform the same types of services.

#### Child Labor Provisions

The child labor provisions of the FLSA are designed to protect the educational opportunities of minors and to prohibit the employment of minors in jobs that are detrimental to their health and well being. The provisions include a restriction on the number of hours that minors under the age of 16 may work, and a list of hazardous occupations that are considered too dangerous for minors. A list of prohibited occupations is available from the local

wage and hour offices of the U.S. Department of Labor. Youths 14 and 15 years old may work outside school hours in various non-hazardous jobs subject to the following two conditions: 1) No more than 3 hours work on a school day or 18 hours in a school week; 2) No more than 8 hours on a non-school day or 40 hours in a non-school week. Also, work may not begin before 7 a.m. or end after 7 p.m., except from June 1 through Labor Day, when evening hours are extended to 9 p.m.

In addition, the Wage and Hour Act of the N.C. General Statutes (Chapter 95, Article 2A) has additional child labor provisions. According to G.S. 95-25.5(a), no youth less than 18 years of age may be employed by any employer in any occupation without a youth employment certificate, unless specifically exempted. G.S. 95-25.5(c), which conforms to federal law, also designates when youths aged 14 or 15 are allowed to be employed.

#### Recordkeeping

The FLSA requires employers to maintain accurate records on wages, hours, and certain other items. These records must be kept for all employees, whether subject to or exempt from the minimum wage and overtime provisions. The records do not have to be kept in any particular form, and time clocks are not required. In many instances, employers will have already accumulated much of this information during their normal course of business. The basic recordkeeping requirements are summarized as follows:

- A. Employees subject to both minimum wage and overtime pay provisions.
  - 1) Employee's full name and social security number;
  - 2) Address including zip code;
  - 3) Birth date, if younger than 19;
  - 4) Sex and occupation;
  - 5) Time and day of week when employee's workweek begins;
  - 6) Hours worked each day;
  - 7) Total hours worked each workweek;
  - 8) Basis on which employee's wages are paid (e.g., "\$6 an hour", "\$220 a week", "piecework")
  - 9) Regular hourly pay rate;
  - 10) Total daily or weekly straight-time earnings;
  - 11) Total overtime earning for the workweek;
  - 12) All additions to or deductions from the employee's wages;
  - 13) Total wages paid each pay period;

14) Date of payment and the pay period covered by the payment.

B. Employees subject to the compensatory time provisions.

- 1) All of the applicable information required in "A." above;
- 2) The number of hours of compensatory time earned each workweek, or other work period, by each employee at the rate of one and one-half for each overtime hour worked;
- 3) The number of hours of such compensatory time used each workweek, or other work period, by each employee;
- 4) The number of hours of compensatory time paid in cash, the total amount paid, and the date of such payment; and
- 5) Any collective bargaining agreement or written understanding or agreement with respect to earning and using compensatory time. If such agreement or understanding is not in writing, a record of its existence must be kept.

C. Executive, administrative, and professional employees.

- 1) All of the information required in "A." above except for items 6 through 12; and
- 2) Necessary information to permit calculation for each pay period of the employee's total remuneration for employment, including fringe benefits and perquisites (e.g., \$1,200 per month plus hospitalization, insurance plan A, benefit package B, and two weeks paid vacation).

An employer that fails to maintain adequate records could face serious consequences if subjected to enforcement proceedings or a law suit seeking to collect back wages and unpaid overtime. For example, if an employer does not maintain records on overtime hours worked by an employee, a court will allow an employee to present other evidence that overtime was worked for which no compensation was paid. This other evidence can include a personal notebook maintained by the employee of hours worked or the employee's own memory. If the employee can show that some work was performed for which he/she was not properly compensated, the employee would be entitled to some recovery, even if the amount of the recovery is uncertain. The employer is responsible for producing evidence that shows the exact number of hours worked by the employee or that the overtime hours claimed by the employee is unreasonable. An employer that is unable to produce such evidence may be subject to paying speculative overtime amounts.

Enforcement

The provisions of the FLSA are enforced by wage-hour investigators of the local wage and hour offices of the U.S. Department of Labor. The wage-hour investigators have the authority to conduct investigations and gather data on wages, hours, and other employment conditions or practices, in order to determine compliance with the FLSA. If violations are found, the wage-hour investigators have the authority to recommend changes in employment practices in order to bring an employer into compliance with the FLSA. Employers who willfully violate the FLSA may be prosecuted criminally. The violator may be fined up to \$10,000 and a second conviction may result in imprisonment. Also, violators of the child labor provisions are subject to civil monetary penalties of up to \$1,000 per violation. Employers who willfully or repeatedly violate the minimum wage or overtime pay provisions are subject to civil monetary penalties of up to \$1,000 per violation. Finally, the FLSA prohibits the shipment of goods in interstate commerce which were produced in violation of the minimum wage, overtime pay, or child labor provisions.

Common Wage-Hour Violations

Based on wage-hour audits and litigation, a prominent law firm has identified 10 areas of common noncompliance with the requirements of the FLSA. The 10 most common violations made by employers are as follows:

- 1) Misclassification of employees as exempt from the minimum wage and overtime requirements of the FLSA. In many cases, an employee has been erroneously classified as exempt and should have been receiving overtime.
- 2) Not properly compensating employees for meal and break periods. Generally, an employee must be paid for meal periods unless the following conditions are met:
  - a) the period is at least 30 minutes long,
  - b) the employee is completely relieved of duties, and
  - c) the employee can leave the work post, although he/she can be required to stay on the premises of the unit. If an employee is required to perform work during this time, it must be counted as hours worked even if the period is labeled as a meal period and the employee eats during this time. Rest periods and coffee breaks of 20 minutes or less are generally required to be counted as hours worked. To avoid potential problems, employers are advised to require employees to

leave their work areas during a non-paid meal period.

- 3) Not compensating employees for "on-call" time. If an employee is required to sit by the phone and be available for a phone call and come to work immediately, that time is compensable.
- 4) Not paying employees for time in training and other educational sessions. Payment is required when attendance is mandatory and the training session is designed to enhance the skills needed by an employee to perform a current job assignment.
- 5) Not paying employees for compensable travel time.
- 6) Not properly administering a compensable time off policy that substitutes time off for overtime.
- 7) Not compensating employees for unauthorized overtime. If management is aware that an employee is working before or after normal hours, during break times, or at home, the hours worked must be compensated and included as overtime if the employee has worked more than 40 hours in a week.
- 8) Failing to include certain bonus payments or overtime into weekly payments for overtime calculation.
- 9) Not paying employees for all time that is recorded on time cards.
- 10) Not maintaining accurate records or having inconsistent records in cases of dual recordkeeping.

#### A Final Note

The FLSA continues to be a dynamic issue in the federal courts system. New cases are constantly being heard by the courts and as decisions are reached, the application of the FLSA to state and local governments will be further clarified. Consequently, units should be alert for any new rulings by the courts and should periodically consult with their legal counsel about any significant changes to the FLSA.

#### Definitions of Terms

Workweek - a fixed and regularly recurring period of 168 hours during 7 consecutive 24 hour periods. It may begin on any day of the week and any hour of the day established by the employer.

Hours Worked - the time for which an employee is entitled to compensation under the FLSA. Compensation is required for

the time an employee is required to be on duty, on the employer's premises or at a prescribed workplace, and for the time the employee is "suffered or permitted" to work, whether or not the employee is requested to do so. Hours worked can include idle time and time spent in incidental activities, as well as in productive labor. For example, if an employer permits an employee to continue working after the end of a shift, the additional hours would be part of hours worked.

### **Family and Medical Leave Act**

The Family and Medical Leave Act (FMLA) requires covered employers to provide up to 12 weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are eligible if they have worked for a covered employer for at least one year, and for 1,250 hours over the previous 12 months, and work at a location where there are at least 50 employees within 75 miles. The FMLA applies to all public agencies, including federal, State, and local employees, and local education agencies. All covered employers are required to display and keep displayed a poster prepared by the Department of Labor summarizing the major provisions of The Family and Medical Leave Act (FMLA) and telling employees how to file a complaint. The poster must be displayed in a conspicuous place where employees and applicants for employment can see it. A poster must be displayed at all locations even if there are no eligible employees.

Unpaid leave must be granted for any of the following reasons:

1. for the birth of a son or daughter, and to care for the newborn child;
2. for the placement with the employee of a child for adoption or foster care, and to care for the newly placed child;
3. to care for an immediate family member (spouse, child or parent - but not a parent "in-law") with a serious health condition; and
4. when the employee is unable to work because of a serious health condition.

The employee may be required to provide advance leave notice and medical certification. Taking of leave may be denied if requirements are not met. For the duration of FMLA leave, the employer must maintain the employee's health coverage under any "group health plan". Arrangements will need to be made for employees taking unpaid FMLA leave to pay their share of health insurance premiums. For example, if the group health plan involves co-payments by the employer and the employee, an employee on unpaid FMLA leave must make arrangements to pay his or her normal portion of the

insurance premiums to maintain insurance coverage, as must the employer. Other benefits, including cash payments chosen by the employee instead of group health insurance coverage, need not be maintained during periods of unpaid FMLA leave. Certain types of earned benefits, such as seniority or paid leave, need not continue to accrue during periods of unpaid FMLA leave provided that such benefits do not accrue for employees on other types of unpaid leave. For other benefits, such as elected life insurance coverage, the employer and the employee may make arrangements to continue benefits during periods of unpaid FMLA leave. An employer may elect to continue such benefits to ensure that the employee will be eligible to be restored to the same benefits upon returning to work. At the conclusion of the leave, the employer may recover only the employee's share of premiums it paid to maintain other "non-health" benefits during unpaid FMLA leave.

Upon return from FMLA leave, most employees must be restored to their original or "equivalent" positions with equivalent pay, benefits and other employment terms. The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.

For more information on FMLA contact the nearest office of the Wage and Hour Division of the U.S. Department of Labor or visit their web site, [www.dol.gov](http://www.dol.gov).

### **Suggested Reading**

Circular E, Employer's Tax Guide, Department of the Treasury, Internal Revenue Service, revised January 1999.

Directive PD-98-3, "Withholding From Nonresidents for Personal Services", North Carolina Department of Revenue, October 1998.

Federal Register, Friday, April 18, 1986, Part IV, Department of Labor, Wage and Hour Division, 29 CFR Part 553, "Application of the Fair Labor Standards Act to Employees of State and Local Governments".

Federal Register, Friday, September 6, 1991, Part VIII, Department of Labor, Employment Standards Administration, Wage and Hour Division, 29 CFR Part 541, "Exemptions From Minimum Wage and Overtime Compensation Requirements of the Fair Labor Standards Act"; Public Sector Employers; Interim Rule.

Publication 596, Earned Income Credit, Department of the Treasury, Internal Revenue Service, November 1998.

Updated 5/00

Publication 963, Federal-State Reference Guide - Social Security Coverage and FICA Reporting by State and Local Government Employers, Internal Revenue Service, Revised October 1997.

Publication 966, Electronic Federal Tax Payment System, Internal Revenue Service, September 1996.

State of North Carolina Income Tax Withholding Tables and Instructions for Employers, North Carolina Department of Revenue, October 1997.

WH Publication 1282, "Handy Reference Guide to the Fair Labor Standards Act", U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Revised April 1990.

WH Publication 1421, "Compliance Guide to the Family and Medical Leave Act", U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, December 1996.

Appendix A

<u>Summary of Forms</u>	<u>Page</u>
Forms Related to Employment and Payroll:	
Form I-9, Employment Eligibility Verification	46
Form NC-4, N.C. Department of Revenue Employee's Withholding Allowance Certificate	49
Form W-4, IRS, Employee's Withholding Allowance Certificate	51
Form Used for 1099 Compliance:	
Form W-9, IRS, Vendor Tax Identification Number Verification Form	53

[NOTE: The forms included in this appendix are for illustrative purposes only. Employers should be aware of the changing nature of these forms and obtain the latest versions. The updated versions of the employment and payroll forms can be obtained from the INS (Form I-9), the IRS (Form W-4) and the N.C. Department of Revenue (Form NC-4). Their web sites are [www.ins.usdoj.gov](http://www.ins.usdoj.gov), [www.irs.ustreas.gov](http://www.irs.ustreas.gov), and [www.dor.state.nc.us](http://www.dor.state.nc.us), respectively.]

## INSTRUCTIONS

PLEASE READ ALL INSTRUCTIONS CAREFULLY BEFORE COMPLETING THIS FORM.

**Anti-Discrimination Notice.** It is illegal to discriminate against any individual (other than an alien not authorized to work in the U.S.) in hiring, discharging, or recruiting or referring for a fee because of that individual's national origin or citizenship status. It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

**Section 1 - Employee.** All employees, citizens noncitizens, hired after November 6, 1986, must complete Section 1 of this form at the time of hire, which is the actual beginning of employment. **The employer is responsible for ensuring that Section 1 is timely and properly completed.**

**Preparer/Translator Certification.** The Preparer/Translator Certification must be completed if Section 1 is prepared by a person other than the employee. A preparer/translator may be used only when the employee is unable to complete Section 1 on his/her own. However, the employee must still sign Section 1 personally.

**Section 2 - Employer.** For the purpose of completing this form, the term "employer" includes those recruiters and referrers for a fee who are agricultural associations, agricultural employers, or farm labor contractors.

Employers must complete Section 2 by examining evidence of identity and employment eligibility within three (3) business days of the date employment begins. If employees are authorized to work, but are unable to present the required document(s) within three business days, they must present a receipt for the application of the document(s) within three business days and the actual document(s) within ninety (90) days. However, if employers hire individuals for a duration of less than three business days, Section 2 must be completed at the time employment begins. **Employers must record:** 1) document title; 2) issuing authority; 3) document number, 4) expiration date, if any; and 5) the date employment begins. Employers must sign and date the certification. Employees must present original documents. Employers may, but are not required to, photocopy the document(s) presented. These photocopies may only be used for the verification process and must be retained with the I-9. **However, employers are still responsible for completing the I-9.**

**Section 3 - Updating and Reverification.** Employers must complete Section 3 when updating and/or reverifying the I-9. Employers must reverify employment eligibility of their employees on or before the expiration date recorded in Section 1. Employers **CANNOT** specify which document(s) they will accept from an employee.

- If an employee's name has changed at the time this form is being updated/ reverified, complete Block A.
- If an employee is rehired within three (3) years of the date this form was originally completed and the employee is still eligible to be employed on the same basis as previously indicated on this form (updating), complete Block B and the signature block.

- If an employee is rehired within three (3) years of the date this form was originally completed and the employee's work authorization has expired **or** if a current employee's work authorization is about to expire (reverification), complete Block B and:
  - examine any document that reflects that the employee is authorized to work in the U.S. (see List A **or** C),
  - record the document title, document number and expiration date (if any) in Block C, and
  - complete the signature block.

**Photocopying and Retaining Form I-9.** A blank I-9 may be reproduced provided both sides are copied. The Instructions must be available to all employees completing this form. Employers must retain completed I-9s for three (3) years after the date of hire **or** one (1) year after the date employment ends, whichever is later.

**For more detailed information, you may refer to the INS Handbook for Employers, (Form M-274). You may obtain the handbook at your local INS office.**

**Privacy Act Notice.** The authority for collecting this information is the Immigration Reform and Control Act of 1986, Pub. L. 99-603 (8 U.S.C. 1324a).

This information is for employers to verify the eligibility of individuals for employment to preclude the unlawful hiring, or recruiting or referring for a fee, of aliens who are not authorized to work in the United States.

This information will be used by employers as a record of their basis for determining eligibility of an employee to work in the United States. The form will be kept by the employer and made available for inspection by officials of the U.S. Immigration and Naturalization Service, the Department of Labor, and the Office of Special Counsel for Immigration Related Unfair Employment Practices.

Submission of the information required in this form is voluntary. However, an individual may not begin employment unless this form is completed since employers are subject to civil or criminal penalties if they do not comply with the Immigration Reform and Control Act of 1986.

**Reporting Burden.** We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. Accordingly, the reporting burden for this collection of information is computed as follows: 1) learning about this form, 5 minutes; 2) completing the form, 5 minutes; and 3) assembling and filing (recordkeeping) the form, 5 minutes, for an average of 15 minutes per response. If you have comments regarding the accuracy of this burden estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D. C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0136, Washington, D.C. 20503.

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE.** It is illegal to discriminate against work eligible individuals. Employers **CANNOT** specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Verification.** To be completed and signed by employee at the time employment begins

Print Name: Last	First	Middle Initial	Maiden Name
Address (Street Name and Number)		Apt. #	Date of Birth (month/day/year)
City	State	Zip Code	Social Security #
I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.		I attest, under penalty of perjury, that I am (check one of the following): A citizen or national of the United States A Lawful Permanent Resident (Alien # A _____) An alien authorized to work until ___/___/___ (Alien # or Admission # _____)	
Employee's Signature			Date (month/day/year)

**Preparer and/or Translator Certification.** (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature	Print Name
Address (Street Name and Number, City, State, Zip Code)	
Date (month/day/year)	

**Section 2. Employer Review and Verification.** To be completed and signed by employer. **Examine one document from List A OR examine one document from List B and one from List C** as listed on the reverse of this form and record the title, number and expiration date, if any, of the document(s)

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): ___/___/___		___/___/___		___/___/___
Document #: _____		_____		_____
Expiration Date (if any): ___/___/___		_____		_____

**CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_/\_\_\_/\_\_\_ and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment).**

Signature of Employer or Authorized Representative	Print Name	Title
Business or Organization Name	Address (Street Name and Number, City, State, Zip Code)	Date (month/day/year)

**Section 3. Updating and Reverification.** To be completed and signed by employer

A. New Name (if applicable)	B. Date of rehire (month/day/year) (if applicable)					
C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility.						
Document	Title: _____	Document #:	#:	Expiration	Date	(if any): ___/___/___

**I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.**

Signature of Employer or Authorized Representative	Date (month/day/year)
--	-----------------------

## LISTS OF ACCEPTABLE DOCUMENTS

### LIST A

#### Documents that Establish Both Identity and Employment Eligibility

1. U.S. Passport (unexpired or expired)
2. Certificate of U.S. Citizenship (*INS Form N-560 or N-561*)
3. Certificate of Naturalization (*INS Form N-550 or N-570*)
4. Unexpired foreign passport, with *I-551 stamp* or attached *INS Form I-94* indicating unexpired employment authorization
5. Alien Registration Receipt Card with photograph (*INS Form I-151 or I-551*)
6. Unexpired Temporary Resident Card (*INS Form I-688*)
7. Unexpired Employment Authorization Card (*INS Form I-688A*)
8. Unexpired Reentry Permit (*INS Form I-327*)
9. Unexpired Refugee Travel Document (*INS Form I-571*)
10. Unexpired Employment Authorization Document issued by the INS which contains a photograph (*INS Form I-688B*)

**OR**

### LIST B

#### Documents that Establish Identity

1. Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
  2. ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
  3. School ID card with a photograph
  4. Voter's registration card
  5. U.S. Military card or draft record
  6. Military dependent's ID card
  7. U.S. Coast Guard Merchant Mariner Card
  8. Native American tribal document
  9. Driver's license issued by a Canadian government authority
- For persons under age 18 who are unable to present a document listed above:**
10. School record or report card
  11. Clinic, doctor, or hospital record
  12. Day-care or nursery school record

**AND**

### LIST C

#### Documents that Establish Employment Eligibility

1. U.S. social security card issued by the Social Security Administration (*other than a card stating it is not valid for employment*)
2. Certification of Birth Abroad issued by the Department of State (*Form FS-545 or Form DS-1350*)
3. Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal
4. Native American tribal document
5. U.S. Citizen ID Card (*INS Form I-197*)
6. ID Card for use of Resident Citizen in the United States (*INS Form I-179*)
7. Unexpired employment authorization document issued by the INS (*other than those listed under List A*)

**Illustrations of many of these documents appear in Part 8 of the Handbook for Employers (M-274)**

# Employee's Withholding Allowance Certificate

**PURPOSE.** Complete Form NC-4 so that your employer can withhold the correct amount of State income tax from your pay. **EXEMPTION FROM WITHHOLDING.** Read line 6 of the certificate below to see if you can claim exempt status. If exempt, only complete the certificate; but do not complete lines 4 and 5. No State income tax will be withheld from your pay.

**BASIC INSTRUCTIONS.** If you are not exempt, complete the Personal Allowances Worksheet. An additional worksheet is provided on page 2 for employees to adjust their withholding allowances based on itemized deductions, adjustments to income, or tax credits. The worksheets will help you figure the number of withholding allowances you are entitled to claim. However, you may claim fewer allowances if you wish to increase the tax withheld during the year. If your withholding allowances decrease, you must file a new NC-4 with your employer within 10 days after the change occurs except that a new NC-4 is not required until the next year in the following cases:

1. When a dependent dies during the year.
2. When an individual ceases to be a dependent during the year and the support furnished will be

- the chief support for the year.
3. When an individual ceases to be head of household after maintaining the household for the major portion of the year.

**HEAD OF HOUSEHOLD.** Generally you may claim head of household status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. Note: "Head of Household" for State tax purposes is the same as for federal tax purposes.

**QUALIFYING WIDOW(ER).** You may claim qualifying widow(er) status only if your spouse died in either of the two preceding tax years and you meet the following requirements:

1. Your home is maintained as the main household of a child or stepchild for whom you can claim an exemption; and
2. You were entitled to file a joint return with your spouse in the year of your spouse's death.

**Note:** "Qualifying Widow(er)" for State tax purposes is the same as for federal tax purposes. Because the

standard deduction used in the tax tables for married and qualifying widow(er) is \$2,500 and you are entitled to a standard deduction of \$5,000, you may elect to claim an additional personal withholding allowance on line C below to avoid having too much tax withheld.

**MARRIED AND SPOUSE DOES NOT WORK OR HAS WAGE INCOME OF LESS THAN \$3,500.** The withholding tax tables are based on both spouses earning wages during the year. If your spouse does not work or will earn wages of less than \$3,500 during the year, you may elect to complete line B below to avoid having too much tax withheld.

**TWO JOBS.** If you have more than one job, figure the total number of allowances you are entitled to claim on all jobs using only one form NC-4. This total should be divided among all jobs. Your withholding will usually be most accurate when all allowances are claimed on the NC-4 filed for the higher paying job and zero allowances are claimed for the other.

**NONWAGE INCOME.** If you have a large amount of nonwage income, such as interest or dividends, you should consider making estimated tax payments using Form NC-40.

### Personal Allowances Worksheet

- A. Enter "1" for yourself if no one else can claim you as a dependent ..... A. \_\_\_\_\_
- IN ADDITION TO A. ABOVE:**
- B. Enter "1" if you are married and you expect your spouse's wages to be from \$1,000 to \$3,500.  
Enter "2" if you are married and your spouse has no income or expects to earn less than \$1,000 .... B. \_\_\_\_\_
- C. Enter "1" if you are a qualifying widow(er). ..... C. \_\_\_\_\_
- D. Enter the number of dependents (other than your spouse or yourself) whom you will claim on your tax return ..... D. \_\_\_\_\_
- E. If you plan to itemize, claim adjustments to income, or have allowable tax credits and want to reduce your withholding, complete the Deductions, Adjustments, and Tax Credits Worksheet on page 2 and enter number from line 14 ..... E. \_\_\_\_\_
- F. Add lines A through E and enter total here and on line 4 of your Employee's Withholding Allowance Certificate ..... F. \_\_\_\_\_

..... **Cut here and give this certificate to your employer. Keep the top portion for your records** .....

North Carolina Department of Revenue

Form **NC-4** **Employee's Withholding Allowance Certificate**

1 Type or print your first name and middle initial _____ Last name _____		2 Your social security number _____	
Home address (number and street or rural route) _____		3 Marital Status { <input type="checkbox"/> Single <input type="checkbox"/> Married or Qualifying Widow(er) <input type="checkbox"/> Head of Household	
City or town, state, and ZIP code _____			
4 Total number of allowances you are claiming (from line F above) .....			4
5 Additional amount, if any, you want deducted from each pay period .....			5 \$
6 I claim exemption from withholding and I certify that I meet <b>ALL</b> of the following conditions for exemption: <ul style="list-style-type: none"> <li>• Last year I was entitled to a refund of <b>ALL</b> State income tax withheld because I had <b>NO</b> tax liability; <b>AND</b></li> <li>• This year I expect a refund of <b>ALL</b> State income tax withheld because I expect to have <b>NO</b> tax liability.</li> </ul> If claiming exempt, the statement is effective for one calendar year only and a new statement must be completed and given to your employer by next February 15.			
If you meet all of the above conditions, enter the year effective and write "EXEMPT" here .....			6 20
7 Are you a full-time student? ( <b>Note:</b> <i>Full-time students are not automatically exempt</i> ) .....			7 <input type="checkbox"/> Yes <input type="checkbox"/> No

I certify, under penalties provided by law, that the withholding allowances claimed on this certificate do not exceed the amount to which I am entitled.

Employee's signature _____		Date _____, 20	
8 Employer's name and address ( <b>Employer:</b> Complete 8 and 9 only if sending to NCDR)		9 FEIN _____	

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**Deductions, Adjustments, and Tax Credits Worksheet**

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1. Additional withholding allowances may be claimed if you expect to have allowable itemized deductions exceeding the standard deduction. Enter an estimate of the total itemized deductions to be claimed on your federal tax return less the amount of any State income tax included in your federal deductions ..... 1. \_\_\_\_\_
  
2. Enter            {    \$4,400 if head of household  
                          {    \$3,000 if single  
                          {    \$2,500 if married filing separately  
                          {    \$5,000 if married filing jointly or qualifying widow(er) ..... 2. \_\_\_\_\_
  
3. Subtract line 2 from line 1, enter the result here ..... 3. \_\_\_\_\_
  
4. Enter an estimate of your federal adjustments to income and your State deductions from federal taxable income ..... 4. \_\_\_\_\_
  
5. Add lines 3 and 4 ..... 5. \_\_\_\_\_
  
6. Enter an estimate of your nonwage income (such as dividends or interest) ..... 6. \_\_\_\_\_
  
7. Enter an estimate of your State additions to federal taxable income (do not enter the addition for state income tax or the additions for the standard deduction and personal exemption inflation adjustment) ..... 7. \_\_\_\_\_
  
8. Add lines 6 and 7 ..... 8. \_\_\_\_\_
  
9. Subtract line 8 from line 5 ..... 9. \_\_\_\_\_
  
10. Divide the amount on line 9 by \$2,500 (\$2,000 if you expect your income from all sources for the year to equal or exceed the following amounts for your filing status: \$60,000 - single; \$80,000 - head of household; \$50,000 - married or qualifying widow(er)) and enter the result here. Drop any fraction ..... 10. \_\_\_\_\_
  
11. If you are entitled to tax credits, for each \$175 (\$140 if you expect your income from all sources for the year to equal or exceed the following amounts for your filing status: \$60,000 - single; \$80,000 - head of household; \$50,000 - married or qualifying widow(er)) of tax credit, enter "1" additional allowance ..... 11. \_\_\_\_\_
  
12. Add lines 10 and 11 and enter total here ..... 12. \_\_\_\_\_
  
13. If you completed this worksheet on the basis of married filing jointly, enter the number from line 12 that your spouse will claim ..... 13. \_\_\_\_\_
  
14. Subtract line 13 from line 12 and enter the total here and on line E of the Personal Allowances Worksheet ..... 14. \_\_\_\_\_

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If you furnish an employer with an Employee's Withholding Allowance Certificate that contains information which has no reasonable basis and results in a lesser amount of tax being withheld than would have been withheld had you furnished reasonable information, you are subject to a penalty of 50% of the amount not properly withheld.

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# Form W-4 (2000)

**Purpose.** Complete Form W-4 so your employer can withhold the correct Federal income tax from your pay. Because your tax situation may change, you may want to refigure your withholding each year.

**Exemption from withholding.** If you are exempt, complete only lines 1, 2, 3, 4, and 7, and sign the form to validate it. Your exemption for 2000 expires February 16, 2001.

**Note:** You cannot claim exemption from withholding if (1) your income exceeds \$700 and includes more than \$250 of unearned income (e.g., interest and dividends) and (2) another person can claim you as a dependent on their tax return.

**Basic instructions.** If you are not exempt, complete the **Personal Allowances Worksheet** below. The worksheets on page 2 adjust your withholding allowances based on itemized

deductions, adjustments to income, or two-earner/two-job situations. Complete all worksheets that apply. They will help you figure the number of withholding allowances you are entitled to claim. **However, you may claim fewer (or zero) allowances.**

**Child tax and higher education credits.** For details on adjusting withholding for these and other credits, see **Pub. 919, How Do I Adjust My Tax Withholding?**

**Head of household.** Generally, you may claim head of household filing status on your tax return only if you are unmarried and pay more than 50% of the costs of keeping up a home for yourself and your dependent(s) or other qualifying individuals. See line **E** below.

**Nonwage income.** If you have a large amount of nonwage income, such as interest or dividends, you should consider making estimated tax payments using **Form 1040-ES, Estimated Tax for Individuals.** Otherwise, you may owe additional tax.

**Two earners/two jobs.** If you have a working spouse or more than one job, figure the total number of allowances you are entitled to claim on all jobs using worksheets from only one Form W-4. Your withholding usually will be most accurate when all allowances are claimed on the Form W-4 prepared for the highest paying job and zero allowances are claimed for the others.

**Check your withholding.** After your Form W-4 takes effect, use Pub. 919 to see how the dollar amount you are having withheld compares to your projected total tax for 2000. Get Pub. 919 especially if you used the **Two-Earner/Two-Job Worksheet** on page 2 and your earnings exceed \$150,000 (Single) or \$200,000 (Married).

**Recent name change?** If your name on line 1 differs from that shown on your social security card, call 1-800-772-1213 for a new social security card.

## Personal Allowances Worksheet (Keep for your records.)

**A** Enter "1" for **yourself** if no one else can claim you as a dependent . . . . . **A** \_\_\_\_\_

**B** Enter "1" if: {   
 • You are single and have only one job; or   
 • You are married, have only one job, and your spouse does not work; or   
 • Your wages from a second job or your spouse's wages (or the total of both) are \$1,000 or less. } . . . **B** \_\_\_\_\_

**C** Enter "1" for your **spouse**. But, you may choose to enter -0- if you are married and have either a working spouse or more than one job. (Entering -0- may help you avoid having too little tax withheld.) . . . . . **C** \_\_\_\_\_

**D** Enter number of **dependents** (other than your spouse or yourself) you will claim on your tax return . . . . . **D** \_\_\_\_\_

**E** Enter "1" if you will file as **head of household** on your tax return (see conditions under **Head of household** above) . . . **E** \_\_\_\_\_

**F** Enter "1" if you have at least \$1,500 of **child or dependent care expenses** for which you plan to claim a credit . . . **F** \_\_\_\_\_

**G Child Tax Credit:**

- If your total income will be between \$18,000 and \$50,000 (\$23,000 and \$63,000 if married), enter "1" for each eligible child.
- If your total income will be between \$50,000 and \$80,000 (\$63,000 and \$115,000 if married), enter "1" if you have two eligible children, enter "2" if you have three or four eligible children, or enter "3" if you have five or more eligible children **G** \_\_\_\_\_

**H** Add lines A through G and enter total here. **Note:** This may be different from the number of exemptions you claim on your tax return. ► **H** \_\_\_\_\_

For accuracy, complete all worksheets that apply. {   
 • If you plan to **itemize or claim adjustments to income** and want to reduce your withholding, see the **Deductions and Adjustments Worksheet** on page 2.   
 • If you are **single**, have **more than one job** and your combined earnings from all jobs exceed \$34,000, OR if you are **married** and have a **working spouse or more than one job** and the combined earnings from all jobs exceed \$60,000, see the **Two-Earner/Two-Job Worksheet** on page 2 to avoid having too little tax withheld.   
 • If **neither** of the above situations applies, **stop here** and enter the number from line H on line 5 of Form W-4 below.

----- Cut here and give Form W-4 to your employer. Keep the top part for your records. -----

Form <b>W-4</b> Department of the Treasury Internal Revenue Service	<b>Employee's Withholding Allowance Certificate</b> ► For Privacy Act and Paperwork Reduction Act Notice, see page 2.	OMB No. 1545-0010 <b>2000</b>
1 Type or print your first name and middle initial _____ Last name _____		2 Your social security number _____
Home address (number and street or rural route) _____		3 <input type="checkbox"/> Single <input type="checkbox"/> Married <input type="checkbox"/> Married, but withhold at higher Single rate. <b>Note:</b> If married, but legally separated, or spouse is a nonresident alien, check the Single box.
City or town, state, and ZIP code _____		4 If your last name differs from that on your social security card, check here. <b>You must call 1-800-772-1213 for a new card</b> . . . . . <input type="checkbox"/>
5 Total number of allowances you are claiming (from line H above OR from the applicable worksheet on page 2)		5 _____
6 Additional amount, if any, you want withheld from each paycheck . . . . .		6 \$ _____
7 I claim exemption from withholding for 2000, and I certify that I meet <b>BOTH</b> of the following conditions for exemption: • Last year I had a right to a refund of <b>ALL</b> Federal income tax withheld because I had <b>NO</b> tax liability <b>AND</b> • This year I expect a refund of <b>ALL</b> Federal income tax withheld because I expect to have <b>NO</b> tax liability. If you meet both conditions, write "EXEMPT" here . . . . . ►		7 _____
Under penalties of perjury, I certify that I am entitled to the number of withholding allowances claimed on this certificate, or I am entitled to claim exempt status.		
Employee's signature _____ (Form is not valid unless you sign it) ►		Date ► _____
8 Employer's name and address (Employer: Complete lines 8 and 10 only if sending to the IRS.) _____		9 Office code (optional) _____
		10 Employer identification number _____

**Deductions and Adjustments Worksheet**

**Note:** Use this worksheet only if you plan to itemize deductions or claim adjustments to income on your 2000 tax return.

1 Enter an estimate of your 2000 itemized deductions. These include qualifying home mortgage interest, charitable contributions, state and local taxes, medical expenses in excess of 7.5% of your income, and miscellaneous deductions. (For 2000, you may have to reduce your itemized deductions if your income is over \$128,950 (\$64,475 if married filing separately). See **Worksheet 3** in Pub. 919 for details.) . . . 1 \$ \_\_\_\_\_

2 Enter:  $\left\{ \begin{array}{l} \$7,350 \text{ if married filing jointly or qualifying widow(er)} \\ \$6,450 \text{ if head of household} \\ \$4,400 \text{ if single} \\ \$3,675 \text{ if married filing separately} \end{array} \right\}$  . . . . . 2 \$ \_\_\_\_\_

3 **Subtract** line 2 from line 1. If line 2 is greater than line 1, enter -0- . . . . . 3 \$ \_\_\_\_\_

4 Enter an estimate of your 2000 adjustments to income, including alimony, deductible IRA contributions, and student loan interest . . . . . 4 \$ \_\_\_\_\_

5 **Add** lines 3 and 4 and enter the total (Include any amount for credits from **Worksheet 7** in Pub. 919.) . . . . . 5 \$ \_\_\_\_\_

6 Enter an estimate of your 2000 nonwage income (such as dividends or interest) . . . . . 6 \$ \_\_\_\_\_

7 **Subtract** line 6 from line 5. Enter the result, but not less than -0- . . . . . 7 \$ \_\_\_\_\_

8 **Divide** the amount on line 7 by \$3,000 and enter the result here. Drop any fraction . . . . . 8 \_\_\_\_\_

9 Enter the number from the **Personal Allowances Worksheet**, line H, page 1 . . . . . 9 \_\_\_\_\_

10 **Add** lines 8 and 9 and enter the total here. If you plan to use the **Two-Earner/Two-Job Worksheet**, also enter this total on line 1 below. Otherwise, **stop here** and enter this total on Form W-4, line 5, page 1 . . . . . 10 \_\_\_\_\_

**Two-Earner/Two-Job Worksheet**

**Note:** Use this worksheet only if the instructions under line H on page 1 direct you here.

1 Enter the number from line H, page 1 (or from line 10 above if you used the **Deductions and Adjustments Worksheet**) . . . . . 1 \_\_\_\_\_

2 Find the number in **Table 1** below that applies to the **LOWEST** paying job and enter it here . . . . . 2 \_\_\_\_\_

3 If line 1 is **MORE THAN OR EQUAL TO** line 2, subtract line 2 from line 1. Enter the result here (if zero, enter -0-) and on Form W-4, line 5, page 1. **Do not** use the rest of this worksheet . . . . . 3 \_\_\_\_\_

**Note:** If line 1 is **LESS THAN** line 2, enter -0- on Form W-4, line 5, page 1. Complete lines 4-9 below to calculate the additional withholding amount necessary to avoid a year end tax bill.

4 Enter the number from line 2 of this worksheet . . . . . 4 \_\_\_\_\_

5 Enter the number from line 1 of this worksheet . . . . . 5 \_\_\_\_\_

6 **Subtract** line 5 from line 4 . . . . . 6 \_\_\_\_\_

7 Find the amount in **Table 2** below that applies to the **HIGHEST** paying job and enter it here . . . . . 7 \$ \_\_\_\_\_

8 **Multiply** line 7 by line 6 and enter the result here. This is the additional annual withholding needed . . . . . 8 \$ \_\_\_\_\_

9 Divide line 8 by the number of pay periods remaining in 2000. For example, divide by 26 if you are paid every other week and you complete this form in December 1999. Enter the result here and on Form W-4, line 6, page 1. This is the additional amount to be withheld from each paycheck . . . . . 9 \$ \_\_\_\_\_

**Table 1: Two-Earner/Two-Job Worksheet**

Married Filing Jointly				All Others			
If wages from LOWEST paying job are—	Enter on line 2 above	If wages from LOWEST paying job are—	Enter on line 2 above	If wages from LOWEST paying job are—	Enter on line 2 above	If wages from LOWEST paying job are—	Enter on line 2 above
\$0 - \$4,000 . . . . .	0	41,001 - 45,000 . . . . .	8	\$0 - \$5,000 . . . . .	0	65,001 - 80,000 . . . . .	8
4,001 - 7,000 . . . . .	1	45,001 - 55,000 . . . . .	9	5,001 - 11,000 . . . . .	1	80,001 - 100,000 . . . . .	9
7,001 - 13,000 . . . . .	2	55,001 - 63,000 . . . . .	10	11,001 - 17,000 . . . . .	2	100,001 and over . . . . .	10
13,001 - 19,000 . . . . .	3	63,001 - 70,000 . . . . .	11	17,001 - 22,000 . . . . .	3		
19,001 - 25,000 . . . . .	4	70,001 - 85,000 . . . . .	12	22,001 - 27,000 . . . . .	4		
25,001 - 31,000 . . . . .	5	85,001 - 100,000 . . . . .	13	27,001 - 40,000 . . . . .	5		
31,001 - 37,000 . . . . .	6	100,001 - 110,000 . . . . .	14	40,001 - 50,000 . . . . .	6		
37,001 - 41,000 . . . . .	7	110,001 and over . . . . .	15	50,001 - 65,000 . . . . .	7		

**Table 2: Two-Earner/Two-Job Worksheet**

Married Filing Jointly		All Others	
If wages from HIGHEST paying job are—	Enter on line 7 above	If wages from HIGHEST paying job are—	Enter on line 7 above
\$0 - \$50,000 . . . . .	\$420	\$0 - \$30,000 . . . . .	\$420
50,001 - 100,000 . . . . .	780	30,001 - 60,000 . . . . .	780
100,001 - 130,000 . . . . .	870	60,001 - 120,000 . . . . .	870
130,001 - 250,000 . . . . .	1,000	120,001 - 270,000 . . . . .	1,000
250,001 and over . . . . .	1,100	270,001 and over . . . . .	1,100

**Privacy Act and Paperwork Reduction Act Notice.** We ask for the information on this form to carry out the Internal Revenue laws of the United States. The Internal Revenue Code requires this information under sections 3402(f)(2)(A) and 6109 and their regulations. Failure to provide a properly completed form will result in your being treated as a single person who claims no withholding allowances; **providing fraudulent information may also subject you to penalties.** Routine uses of this information include giving it to the Department of Justice for civil and criminal litigation, to cities, states, and the District of Columbia for use in administering their tax laws, and for use in the National Directory of New Hires.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB

control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is: **Recordkeeping** 46 min., **Learning about the law or the form** 13 min., **Preparing the form** 59 min. If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **DO NOT** send the tax form to this address. Instead, give it to your employer.





## Specific Instructions

**Name.** If you are an individual, you must generally enter the name shown on your social security card. However, if you have changed your last name, for instance, due to marriage, without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first and then circle the name of the person or entity whose number you enter in Part I of the form.

**Sole proprietor.** You must enter your individual name as shown on your social security card. You may enter your business, trade, or "doing business as" name on the **business name** line.

**Other entities.** Enter your business name as shown on required Federal tax documents. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or "doing business as" name on the business name line.

### Part I—Taxpayer Identification Number (TIN)

You must enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see **How to get a TIN** below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, using your EIN may result in unnecessary notices to the requester.

**Note:** See the chart on this page for further clarification of name and TIN combinations.

**How to get a TIN.** If you do not have a TIN, apply for one immediately. To apply for an SSN, get **Form SS-5**, Application for a Social Security Card, from your local Social Security Administration office. Get **Form W-7**, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN or **Form SS-4**, Application for Employer Identification Number, to apply for an EIN. You can get Forms W-7 and SS-4 from the IRS by calling 1-800-TAX-FORM (1-800-829-3676) or from the IRS's Internet Web Site at [www.irs.gov](http://www.irs.gov).

If you do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester. Other payments are subject to backup withholding.

**Note:** Writing "Applied For" means that you have already applied for a TIN OR that you intend to apply for one soon.

### Part II—For Payees Exempt From Backup Withholding

Individuals (including sole proprietors) are **not** exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends. For more information on exempt payees, see the separate Instructions for the Requester of Form W-9.

If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding. Enter your correct TIN in Part I, write "Exempt" in Part II, and sign and date the form.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester a completed Form W-8 (certification of foreign status).

### Part III—Certification

For a joint account, only the person whose TIN is shown in Part I should sign (when required).

**1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983.** You must give your correct TIN, but you do not have to sign the certification.

**2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983.** You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

**3. Real estate transactions.** You must sign the certification. You may cross out item 2 of the certification.

**4. Other payments.** You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

**5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified state tuition program payments, IRA or MSA contributions or distributions, and pension distributions.** You must give your correct TIN, but you do not have to sign the certification.

### Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to give your correct TIN to

persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA or MSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, and the District of Columbia to carry out their tax laws.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 31% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.

## What Name and Number To Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual on the account <sup>1</sup>
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor <sup>2</sup>
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee <sup>1</sup>
b. So-called trust account that is not a legal or valid trust under state law	The actual owner <sup>1</sup>
5. Sole proprietorship	The owner <sup>3</sup>
For this type of account:	Give name and EIN of:
6. Sole proprietorship	The owner <sup>3</sup>
7. A valid trust, estate, or pension trust	Legal entity <sup>4</sup>
8. Corporate	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments	The public entity

<sup>1</sup> List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

<sup>2</sup> Circle the minor's name and furnish the minor's SSN.

<sup>3</sup> You must show your individual name, but you may also enter your business or "doing business as" name. You may use either your SSN or EIN (if you have one).

<sup>4</sup> List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

**Note:** If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.





# Instructions for the Requester of Form W-9

(Rev. November 1999)

## Request for Taxpayer Identification Number and Certification

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

These instructions supplement the instructions on the Form W-9 for the requester.

### How Do I Know When To Use Form W-9?

Use Form W-9 to request the taxpayer identification number (TIN) of a **U.S. person** (including a resident alien) and to request certain certifications and claims for exemption. (See **Purpose of form** on the Form W-9.)

IRS **prefers** you use a Form W-8 (certificate of foreign status) for nonresident aliens and foreign entities not subject to backup withholding. After December 31, 2000, foreign persons **must** use an appropriate Form W-8.

### Electronic Submission of Forms W-9

Requesters may establish a system for payees to submit Forms W-9 electronically, including by fax. A requester is anyone required to file an information return. A payee is anyone required to provide a taxpayer identification number (TIN) to the requester. Generally, the electronic system must —

- Ensure the information received is the information sent, and document all occasions of user access that result in the submission.
- Make it reasonably certain the person accessing the system and submitting the form is the person identified on Form W-9.
- Provide the same information as the paper Form W-9.
- Require as the final entry in the submission an electronic signature by the payee whose name is on Form W-9 that authenticates and verifies the submission. The electronic signature must be under penalties of perjury and the perjury statement must contain the language of the paper Form W-9.

**Note:** For Forms W-9 that are not required to be signed, the electronic system need not provide for an electronic signature or a perjury statement.

- Be able to supply a hard copy of the electronic Form W-9 if the Internal Revenue Service requests it.

Additional requirements may apply. See Announcement 98-27, 1998-1 C.B. 865.

### Individual Taxpayer Identification Number (ITIN)

Form W-9 (or an acceptable substitute) is used by persons required to file information returns with the IRS to get the payee's (or other person's) correct TIN. For individuals, the TIN is generally a social security number (SSN).

However, in some cases, individuals who become U.S. resident aliens for tax purposes are not eligible to obtain an SSN. This includes certain resident aliens who must receive information returns but who cannot obtain an SSN.

These individuals must apply for an ITIN on **Form W-7**, Application for IRS Individual Taxpayer Identification Number, unless they have an application pending for an SSN. Individuals who have an ITIN must provide it on Form W-9.

### Substitute Form W-9

You may develop and use your own Form W-9 (a substitute Form W-9) if its content is substantially similar to the IRS's official Form W-9 and it satisfies certain certification requirements.

You may incorporate a substitute Form W-9 into other business forms you customarily use, such as account signature cards, provided the certifications that **(1)** the payee's TIN is correct and **(2)** the payee is not subject to backup withholding due to failure to report interest and dividend income, shown on the official Form W-9, are clearly set forth. You **may not**:

1. Use a substitute Form W-9 that requires the payee, by signing, to agree to provisions unrelated to the required certifications or

2. Imply that a payee may be subject to backup withholding unless the payee agrees to provisions on the substitute form that are unrelated to the required certifications.

A substitute Form W-9 that contains a **separate signature line** just for the certifications satisfies the requirement that the certifications be clearly set forth.

If a **single signature line** is used for the required certifications and other provisions, the certifications must be highlighted, boxed, printed in bold-face type, or presented in some other manner that causes the language to stand out from all other information contained on the substitute form. Additionally, the following statement must be presented in the same manner as in the preceding sentence and must appear immediately above the single signature line: "The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding."

If you use a substitute form, the instructions do not have to be furnished to the payee. The payee only needs to be instructed orally or in writing to strike out the language of the certification that relates to payee underreporting, if the payee is subject to backup withholding due to notified payee underreporting. However, you are encouraged to provide instructions relevant to the account, especially if the payee requests them.

### TIN Applied For

For interest and dividend payments and certain payments with respect to readily tradable instruments, if the payee returns a properly completed Form W-9 with "Applied For" written in Part I (i.e., an "awaiting TIN" certificate), the payee must give you a TIN within 60 calendar days to avoid backup withholding. You may use one of the following rules to backup withhold during this 60-day period.

**Note:** The 60-day exemption from backup withholding does not apply to any payment other than interest, dividends, and certain payments made with respect to readily tradable instruments.

Therefore, any other payment, such as nonemployee compensation, is subject to backup withholding even if the payee has applied for and is awaiting a TIN.

**Reserve rule.** If a payee withdraws more than \$500 at one time during the 60-day period, you must backup withhold on any reportable payments made during the period, unless the payee reserves 31% of all reportable payments made to the account during the period.

**Alternative rule (option 1).** You must backup withhold on any reportable payments if the payee makes a withdrawal from the account after the close of 7 business days after you receive the awaiting-TIN certificate. Treat as reportable payments all cash withdrawals in an amount up to the reportable payments made from the day after you receive the awaiting-TIN certificate to the day of withdrawal.

**Alternative rule (option 2).** You must backup withhold on any reportable payments made to the payee's account, regardless of whether the payee makes any withdrawals. Backup withholding under this option must begin no later than 7 business days after you receive the awaiting-TIN certificate.

## Payees Exempt From Backup Withholding

Even if the payee does not provide a TIN in the manner required, you are **not required** to backup withhold on any payments you make if the payee is:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2).
2. The United States or any of its agencies or instrumentalities.
3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities.
4. A foreign government or any of its political subdivisions, agencies, or instrumentalities.
5. An international organization or any of its agencies or instrumentalities.

Other payees that **may be exempt** from backup withholding include:

6. A corporation.
7. A foreign central bank of issue.
8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States.
9. A futures commission merchant registered with the Commodity Futures Trading Commission.
10. A real estate investment trust.
11. An entity registered at all times during the tax year under the Investment Company Act of 1940.
12. A common trust fund operated by a bank under section 584(a).
13. A financial institution.
14. A middleman known in the investment community as a nominee or custodian.
15. A trust exempt from tax under section 664 or described in section 4947.

**Interest and dividend payments.** All listed payees are exempt except the payee in item 9.

**Broker transactions.** All payees listed in items 1 through 13 are exempt. A person registered under the Investment Advisors Act of 1940 who regularly acts as a broker is also exempt.

**Payments reportable under sections 6041 and 6041A.** These payments are generally exempt from backup withholding only if made to payees listed in items 1 through 7. However, the following payments made to a **corporation** and reportable on Form 1099-MISC are not exempt from backup withholding:

- Medical and health care payments.
- Attorneys' fees.
- Payments for services paid by a Federal executive agency.

**Gross proceeds; attorneys.** Reportable gross proceeds paid to attorneys (under section 6045(f)), even if the attorney is a corporation, are not exempt from backup withholding.

**Barter exchange transactions and patronage dividends.** Only payees listed in items 1 through 5 are exempt from backup withholding on these payments.

## Payments Exempt From Backup Withholding

Payments that are not subject to information reporting also are not subject to backup withholding. For details, see sections 6041, 6041A, 6042, 6044, 6045, 6049, 6050A, and 6050N, and their regulations.

**Dividends and patronage dividends** that generally are exempt from backup withholding include:

- Payments to nonresident aliens subject to withholding under section 1441.
- Payments to partnerships not engaged in a trade or business in the United States and that have at least one nonresident alien partner.
- Payments of patronage dividends not paid in money.

- Payments made by certain foreign organizations.
- Section 404(k) distributions made by an ESOP.

**Interest payments** that generally are exempt from backup withholding include:

- Payments of interest on obligations issued by individuals. However, if you pay \$600 or more of interest **in the course of your trade or business** to a payee, you must report the payment. Backup withholding applies to the reportable payment if the payee has not provided a TIN or has provided an incorrect TIN.
- Payments of tax-exempt interest (including exempt-interest dividends under section 852).
- Payments described in section 6049(b)(5) to nonresident aliens.
- Payments on tax-free covenant bonds under section 1451.
- Payments made by certain foreign organizations.
- Mortgage or student loan interest paid to you.

**Other types of payments** that generally are exempt from backup withholding include:

- Wages.
- Distributions from a pension, annuity, profit-sharing or stock bonus plan, any IRA, or an owner-employee plan.
- Certain surrenders of life insurance contracts.
- Gambling winnings if withholding is required under section 3402(q). However, if withholding is not required under section 3402(q), backup withholding applies if the payee fails to furnish a TIN.
- Real estate transactions reportable under section 6045(e).
- Cancelled debts reportable under section 6050P.
- Distributions from a medical savings account and long-term care benefits.
- Fish purchases for cash reportable under section 6050R.

## Joint Foreign Payees

If the first payee listed on an account gives you a Form W-8 (certificate of foreign status) or a similar statement signed under penalties of perjury, backup withholding applies unless:

1. Every joint payee provides the statement regarding foreign status or
2. Any one of the joint payees who has not established foreign status gives you a TIN.

If any one of the joint payees who has not established foreign status gives you a TIN, use that number for purposes of backup withholding and information reporting.

## Names and TINs To Use for Information Reporting

Show the full name and address as provided on Form W-9 on the information return filed with the IRS and on the copy furnished to the payee. If you made payments to more than one payee or the account is in more than one name, enter on the first name line **ONLY** the name of the payee whose TIN is shown on the information return. Show the names of any other individual payees in the area below the first name line, if desired.

**Sole proprietors.** You must show the individual's name on the first name line. On the second name line, you may enter the business name or "doing business as (DBA)" if provided. You **may not** enter only the business name. For the TIN, you may enter either the individual's SSN or the employer identification number (EIN) of the business. However, the IRS prefers that you show the SSN.

## Additional Information

For more information on backup withholding, get **Pub. 1679**, A Guide to Backup Withholding, or **Pub. 1281**, Backup Withholding on Missing and Incorrect Name/TINs.

## Notices From the IRS

The IRS will send you a notice if the payee's name and TIN on the information return you filed do not match the IRS's records. You may have to send a "B" notice to the payee to solicit another TIN. See Pubs. 1679 and 1281 for copies of the two types of "B" notices.