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Internal Revenue Service

## Publication 80

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

For use in **2009**



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## What's New

**Commonwealth of the Northern Mariana Islands (CNMI) income taxes.** The U.S. Treasury Department and the (CNMI) Division of Revenue and Taxation entered into a new agreement under 5 USC 5517 in December 2006. Under this agreement, all federal employers with personnel resident in CNMI (including the Department of Defense) are required to withhold CNMI income taxes (rather than federal income taxes) and deposit the CNMI taxes with the CNMI Treasury. Federal employers are also required to file quarterly and annual reports with the CNMI Division of Revenue and Taxation. For questions, contact the CNMI Division of Revenue and Taxation.

**FUTA tax rate for 2009.** The 6.2% FUTA tax rate, which was scheduled to decrease to 6.0% after 2008, has been extended by Public Law 110-343 through calendar year 2009.

**New employment tax adjustment and claim for refund processes in 2009.** If you discover an error on a previously filed Form 941-SS, Employer's QUARTERLY Federal Tax Return, or Form 944-SS, Employer's ANNUAL Federal Tax Return, after December 31, 2008, make the

correction using, respectively, Form 941-X, Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund, or Form 944-X, Adjusted Employer's ANNUAL Federal Tax Return or Claim for Refund. For errors discovered before January 1, 2009, employers make corrections to Form 941-SS or Form 944-SS by attaching Form 941c, Supporting Statement to Correct Information, to their current quarterly Form 941-SS or annual Form 944-SS. Forms 941-X and 944-X are stand-alone forms that will allow employers to correct errors immediately after the errors are discovered. Employers will no longer have to wait until the end of a tax period to make corrections by filing Form 941c with Form 941 or Form 944. All prior period adjustment lines will be deleted from the 2009 Forms 941-SS and 944-SS. Similarly, if you discover an error on a previously filed Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, after December 31, 2008, make the correction using Form 943-X, Adjusted Employer's Annual Federal Tax Return for Agricultural Employees. See *Adjustments* on page 14 for details.

**Social security and Medicare taxes for 2009.** Do not withhold social security tax after an employee reaches \$106,800 in social security wages. There is no limit on the amount of wages subject to Medicare tax. Social security and Medicare taxes apply to the wages of household workers you pay \$1,700 or more in cash. Social security and Medicare taxes apply to election workers who are paid \$1,500 or more.

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## Reminders

**Annual employment tax filing for certain employers.** Certain employers may have to file Form 944-SS, Employer's ANNUAL Federal Tax Return, instead of the Form 941-SS, Employer's QUARTERLY Federal Tax Return. For details, see the Instructions for Form 944-SS.

**Change of address.** If you changed your business mailing address or business location, notify the IRS by filing Form 8822, Change of Address. Do not mail Form 8822 with your employment tax return.

**Credit card payments.** You can pay the balance due shown on Form 944-SS, Forms 941-SS, or Form 940 by credit card. Contact Official Payments Corporation at 1-800-272-9829, or visit [www.officialpayments.com](http://www.officialpayments.com) to make your payment by credit card. You may also contact Link2Gov Corporation at 1-888-658-5465, or visit their website at [www.pay1040.com](http://www.pay1040.com). A convenience fee will be charged for this service. However, do not use a credit card to pay federal tax deposits. For more information on paying your taxes with a credit card, visit the IRS website at [www.irs.gov](http://www.irs.gov) and type "e-pay" in the search box.

**Electronic filing and payment.** Using electronic options can make filing a return and paying your federal tax easier. Use the Electronic Federal Tax Payment System (EFTPS) to make deposits or pay in full, whether you rely on a tax professional or prepare your own taxes. You can use *IRS e-file* to file certain returns. If there is a balance due on the

return, you can e-file and e-pay in a single step by authorizing an electronic funds withdrawal from your bank account while e-filing. Visit the IRS website at [www.irs.gov](http://www.irs.gov) for more information on filing electronically.

- For *e-file*, visit [www.irs.gov](http://www.irs.gov) for additional information.
- For EFTPS, visit [www.eftps.gov](http://www.eftps.gov) or call EFTPS Customer Service at 1-800-555-4477 (U.S. Virgin Islands only) or 303-967-5916 (toll call).
- For electronic filing of Forms W-2AS, W-2CM, W-2GU, W-2VI, W-3SS, and W-2c, visit [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer).

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

**Private delivery services.** You can use certain private delivery services designated by the IRS to send tax returns or payments. The list includes only the following:

- DHL Express (DHL): DHL Same Day Service, DHL Next Day 10:30 am, DHL Next Day 12:00 pm, DHL Next Day 3:00 pm, and DHL 2nd Day Service.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Priority, and FedEx International First.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

Your private delivery service can tell you how to get written proof of the mailing date.



*Private delivery services cannot deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.*

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

There is no required format for such records, but they should include your EIN; the amounts and dates of all wage payments (including fringe benefits) and tips reported; the names, addresses, and occupations of employees receiving such payments and their social security numbers; copies of returns filed; dates of employment; and the dates and amounts of deposits made in accordance with section 8. Farm employers must keep a record of the name, permanent address, and EIN of each crew leader. See *Farm Crew Leaders* on page 5.

**Reporting discrepancies between Forms 941-SS or Forms 944-SS and Forms W-2.** Use Schedule D (Form 941) to explain certain wage, tax, and payment discrepancies between Forms 941-SS (or Forms 944-SS), and Forms W-2 that were caused by acquisitions, statutory mergers, or consolidations. For more information, get the Instructions for Schedule D (Form 941).

**Web-based application for an EIN.** You can apply for an employer identification number (EIN) online by visiting the IRS website at [www.irs.gov/smallbiz](http://www.irs.gov/smallbiz).

**Contacting your Taxpayer Advocate.** The Taxpayer Advocate Service (TAS) is an independent organization within the IRS whose employees assist taxpayers who are experiencing economic harm, who are seeking help in resolving tax problems that have not been resolved through normal channels, or who believe that an IRS system or procedure is not working as it should.

You can contact TAS by calling toll-free 1-877-777-4778 (U.S. Virgin Islands only) or TTY/TTD 1-800-829-4059 to see if you are eligible for assistance. You can also call or write to your local taxpayer advocate, whose phone number and address are listed in your local telephone directory and in Publication 1546, The Taxpayer Advocate Service, Your Voice at the IRS. You can file Form 911, Request for Taxpayer Advocate Service Assistance (And Application for Taxpayer Assistance Order) or ask an IRS employee to complete it on your behalf. For more information, go to [www.irs.gov/advocate](http://www.irs.gov/advocate).

**Tax Help.** You can call the IRS at 1-800-829-4933 (U.S. Virgin Islands only) or 215-516-2000 (toll call), for federal employment tax information, including assistance with completing Form 941-SS (or Form 944-SS). Call 1-800-829-4059 if you are a TTY/TDD user. All employers can get in-depth information about payroll tax topics by visiting the IRS website at [www.irs.gov](http://www.irs.gov) and clicking on the "Businesses" tab.

For a complete listing of free IRS tax services, get Publication 910, IRS Guide To Free Tax Services. See *How To Get Forms and Publications* on page 4 for ordering information.

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

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## Calendar

The following are important dates and responsibilities. Also see Publication 509, Tax Calendars for 2009.

### By January 31

- Furnish wage and tax statements to employees. Give each employee a completed Form W-2AS, W-2CM, W-2GU, or Form W-2VI. See section 10.
- File Form 943, Employer's Annual Federal Tax Return for Agricultural Employees, with the Internal Revenue Service. If you deposited all Form 943 taxes when due, you have 10 additional calendar days to file.
- U.S. Virgin Islands employers only must file Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, with the U.S. Internal Revenue

Service. Pay or deposit (if more than \$500) any balance of the tax due. If you deposited the full amount of taxes when due, you have 10 additional calendar days to file.

- File Form 944-SS, Employer's ANNUAL Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), with the Internal Revenue Service if you were notified by the Internal Revenue Service to file Form 944-SS instead of quarterly Forms 941-SS. If you deposited the full amount of taxes when due, you have 10 additional calendar days to file.

### By March 2

File wage and tax statements with the Social Security Administration (SSA). File Copy A of Forms W-2AS, W-2CM, W-2GU, or Form W-2VI, and Form W-3SS, Transmittal of Wage and Tax Statements, with the Social Security Administration (SSA). For electronically filed returns, see *By March 31* below.

### By March 31

File electronic Forms W-2AS, W-2CM, W-2GU, or Form W-2VI with the SSA. You cannot file electronically using W-2 Online; however, you can transmit an electronic file over the Internet through SSA's Business Service Online (BSO) upload feature. See Social Security's Employer Reporting Instructions and Information website at [www.ssa.gov/bsowelcome.htm](http://www.ssa.gov/bsowelcome.htm) for more information.

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

File Form 941-SS, Employer's QUARTERLY Federal Tax Return (American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), with the Internal Revenue Service. If you deposited the full amount of taxes when due, you have 10 additional calendar days to file. Do not file Forms 941-SS for these quarters if you have been instructed to file Form 944-SS.

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



*If any date shown above for filing a return, furnishing a form, or depositing taxes falls on a Saturday, Sunday, or legal holiday, the due date is the next business day. A statewide legal holiday delays a filing due date only if the IRS office where you are required to file is located in that state. For any due date, you will meet the "file" or "furnish" requirement if the form is properly addressed and mailed First-Class or sent by an IRS-designated delivery service on or before the due date. See Private delivery services on page 2.*

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## Introduction

This publication is for employers whose principal place of business is in the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, or who have employees who are subject to income tax withholding for any of these jurisdictions. Employers and employees in these areas are generally subject to

social security and Medicare taxes under the Federal Insurance Contributions Act (FICA). This publication summarizes employer responsibilities to collect, pay, and report these taxes.

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

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

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

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

This publication also does not include information relating to income tax withholding. In the U.S. Virgin Islands, Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, contact your local tax department for information about income tax withholding. See Publication 15 (Circular E), Employer’s Tax Guide, for information on U.S. federal income tax withholding.

**Tax help.** For federal employment tax information, employers in the U.S. Virgin Islands may call 1-800-829-4933 (toll free). All others may call 215-516-2000 (toll call). If you are in the U.S. Virgin Islands and have access to TTY/TDD equipment, call 1-800-829-4059 with your tax question or to order forms and publications.

If you are an employer in the Commonwealth of the Northern Mariana Islands, contact the Division of Revenue and Taxation at 670-664-1000 to get Form W-2CM and the instructions for completing and filing that form.

## How To Get Forms and Publications



**Internet.** You can access the IRS website at [www.irs.gov](http://www.irs.gov) 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services.
- Download forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

**By phone.** U.S. Virgin Islands employers can order forms and publications 24 hours a day, 7 days a week, toll free, by calling 1-800-TAX-FORM (1-800-829-3676). Others may call 215-516-2000 (toll call).

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

You can write to us at the following address:

Internal Revenue Service  
Tax Products Coordinating Committee  
SE:W:CAR:MP:T:T:SP  
1111 Constitution Ave. NW, IR-6526  
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at [\\*taxforms@irs.gov](mailto:*taxforms@irs.gov). (The asterisk must be included in the address.) Please put “Publications Comment” on the subject line. Although we cannot respond individually to each email, we do appreciate your feedback and will consider your comments as we revise our tax products.

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## 1. Who Are Employees?

Generally, employees are defined either under common law or under special statutes for certain situations.

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

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

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

- a.** An agent (or commission) driver who delivers food or beverages (other than milk) or picks up and delivers laundry or dry cleaning for someone else.
- b.** A full-time life insurance salesperson who sells primarily for one company.
- c.** A homemaker who works by the guidelines of the person for whom the work is done, with materials furnished by and returned to that person or to someone that person designates.
- d.** A traveling or city salesperson (other than an agent-driver or commission-driver) who works full time (except for sideline sales activities) for one firm or person getting orders from customers. The orders must be for items for resale or used as supplies in the customer’s

business. The customers must be retailers, wholesalers, contractors, or operators of hotels, restaurants, or other businesses dealing with food or lodging.

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

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

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

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

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

**Treating employees as nonemployees.** If you incorrectly treated an employee as a nonemployee and did not withhold social security and Medicare taxes, you will be liable for the taxes. See *Treating employees as nonemployees* in Publication 15 (Circular E), for details on Internal Revenue Code section 3509 which may apply.

**IRS help.** If you want the IRS to determine if a worker is an employee, file Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.

## Farm Crew Leaders

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

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## 2. Employer Identification Number (EIN)

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

If you do not have an EIN, request one on Form SS-4, Application for Employer Identification Number. Form SS-4 contains information on how to apply for an EIN by mail,

fax, or telephone. You can also apply online at [www.irs.gov/smallbiz](http://www.irs.gov/smallbiz).

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

You should have only one EIN. If you have more than one, write to the IRS office where you file your returns using the "without a payment" address in the Instructions for Form 941-SS, Instructions for Form 944-SS, or Instructions for Form 943. Or call the IRS Business & Specialty Tax Line (toll free) at 1-800-829-4933 (U.S. Virgin Islands only) or 215-516-2000 (toll call). TTY/TDD users in the U.S. Virgin Islands may call 1-800-829-4059 (toll free). The IRS will tell you which EIN to use.

For more information, see Publication 1635, Understanding Your EIN, or Publication 583, Starting a Business and Keeping Records.

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## 3. Employee's Social Security Number (SSN)

An employee's social security number (SSN) consists of nine digits separated as follows: 000-00-0000. You must get each employee's name and SSN and enter them on the employee's wage and tax statement, Form W-2AS, W-2CM, W-2GU, or Form W-2VI. If you do not report the employee's correct name and SSN, you may owe a penalty unless you have reasonable cause. See Publication 1586, Reasonable Cause Regulations and Requirements for Missing and Incorrect Name/TINs for information on the requirement to solicit the employee's SSN.

**Employee's social security card.** You should ask the employee to show you his or her social security card. The employee may show the card if it is available. You may, but you are not required to, photocopy the social security card if the employee provides it. If an employee does not have a social security card or needs a new one, the employee should apply for one on Form SS-5, Application for a Social Security Card, and submit the necessary documentation. See the back cover of this publication for information on how to get and where to send the form. The employee must complete and sign Form SS-5; it cannot be filed by the employer. If your employee has applied for an SSN but has not received the card before you must file your Form W-2 reports, and you are filing your reports on paper, enter "Applied For" in box d. Enter all zeroes in the SSN block if filing electronically. When the employee receives the SSN, file Form W-2c, Corrected Wage and Tax Statement, with SSA to show the employee's SSN.

**Verification of social security numbers.** The SSA offers employers and authorized reporting agents several methods for verifying employee SSNs. You can get more information by visiting SSA's Employer Reporting Instructions and Information website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer) and selecting "Social Security Number Verification."

**Correctly record the employee's name and SSN.** Record the name and number of each employee as they appear on his or her social security card. If the name is not

correct as shown on the card (for example, because of marriage or divorce), the employee should request a corrected card from the SSA. Continue to use the old name until the employee shows you the replacement social security card with the corrected name.

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

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## 4. Wages and Other Compensation

Generally, all wages are subject to social security and Medicare tax (and FUTA tax for U.S. Virgin Islands employers). However, wages subject to social security tax and FUTA tax are limited by a wage base amount that you pay to each employee for the year. The wage base for social security tax is \$106,800 for 2009. After you pay \$106,800 to an employee in 2009, including tips, do not withhold social security tax on any amount that you later pay to the employee for the year. The wage base for FUTA tax is \$7,000 for 2009. All wages are subject to Medicare tax. The wages may be in cash or in other forms, such as an automobile for personal use. Wages include salaries, vacation allowances, bonuses, commissions, and fringe benefits. It does not matter how payments are measured or paid.

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

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

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

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

Publication 957, *Reporting Back Pay and Special Wage Payments to the Social Security Administration*.

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

**Sick pay.** In general, sick pay is any amount that you pay, under a plan that you take part in, to an employee because of sickness or injury. These amounts are sometimes paid by a third party, such as an insurance company. In either case, these payments are subject to social security, Medicare, and FUTA taxes (U.S. Virgin Islands only). Sick pay becomes exempt from these taxes after the end of 6 calendar months after the calendar month the employee last worked for the employer. Publication 15-A explains the employment tax rules that apply to sick pay, disability benefits, and similar payments to employees.

## Fringe Benefits

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

**When fringe benefits are treated as paid.** You can choose to treat taxable noncash fringe benefits (including personal use of an automobile provided by you) as paid by the pay period, quarter, or on any other basis that you choose, but they must be treated as paid at least annually. You do not have to make a formal choice of payment dates or notify the IRS. You do not have to use the same basis for all employees. You may change methods as often as you like, as long as all benefits provided in a calendar year are treated as paid no later than December 31 of the calendar year. However, see *Special accounting rule for fringe benefits provided during November and December* on page 7.

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

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

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

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

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

**Valuation of vehicles provided to employees.** If you provide a vehicle to your employees, you may either determine the actual value of the benefit for the entire calendar year, taking into account the business use of the vehicle, or consider the entire use for the calendar year as personal and include 100% of the value of the vehicle in the employee's income. For reporting information to employees, see the box 14 instructions under *Specific Instructions for Forms W-2AS, W-2GU, and W-2VI* in the separate Instructions for Forms W-2AS, W-2GU, W-2VI, and Form W-3SS.

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

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

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## 5. Tips

Tips that your employee receives are generally subject to social security and Medicare withholding. Your employee must report cash tips to you by the 10th of the month after the month that the tips are received. The report should include tips that you paid to the employee from charge receipts. Also include tips that the employee received directly from customers and other employees, and indirectly (for example, tip splitting). The report should not include tips that the employee paid out to other employees. No report is required for months when tips are less than \$20. Your employees report tips on Form 4070, Employee's Report of Tips to Employer, or on a similar statement. They may also use Form 4070A, Employee's Daily Record of Tips, to keep a record of their tips. Both forms are printed in Publication 1244, Employee's Daily Record of Tips and Report to Employer, available from the IRS.

The statement must be signed by the employee and must show the following:

- The employee's name, address, and SSN.
- Your name and address.
- The month or period that the report covers.
- The total tips received during the month or period.

**Collecting taxes on tips.** You must collect the employee social security and Medicare taxes on the employee's tips. You can also collect these taxes from the employee's wages or from other funds that he or she makes available.

Stop collecting the employee social security tax when his or her total wages and tips for 2009 reach \$106,800. Collect the employee Medicare tax for the whole year on all wages and tips.

You are responsible for the employer social security tax on wages and tips until the wages (including tips) reach the wage base limit. You are responsible for the employer Medicare tax for the whole year on all wages and tips. File Form 941-SS (or Form 944-SS) to report withholding and employer taxes on tips.

**Ordering rule.** If, by the 10th of the month after the month you received an employee's report on tips, you do not have enough employee funds available to deduct the employee tax, you no longer have to collect it.

**Reporting tips.** Report tips and any uncollected social security and Medicare taxes in boxes 1, 5, 7, and 12 on Forms W-2AS, W-2CM, W-2GU, or Form W-2VI and on lines 5b, 5c, and 7c of Form 941-SS (lines 4b, 4c, and 6a on Form 944-SS). The table in section 12 shows how tips are treated for FUTA tax purposes.



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

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## 6. Social Security and Medicare Taxes for Farmworkers

The tests described below apply only to services that are defined as agricultural labor (farmwork). Farmworkers are your employees if they:

- Raise or harvest agricultural or horticultural products on your farm (including the raising and feeding of livestock);
- Work in connection with the operation, management, conservation, improvement, or maintenance of your farm and its tools, equipment, or services pertaining to hurricane labor;
- Handle, process, or package any agricultural or horticultural commodity if you produced over half of the commodity (for an unincorporated group of up to 20 operators, all of the commodity); or
- Do work for you related to cotton ginning, turpentine, gum resin products, or the operation and maintenance of irrigation facilities.

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

### The \$150 Test or the \$2,500 Test

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

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

**Exceptions.** The \$150 and \$2,500 tests do not apply to wages that you pay to a farmworker who receives less than \$150 in annual cash wages and the wages are not subject to social security and Medicare taxes even if you pay \$2,500 or more in that year to all of your farmworkers if the farmworker:

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

Amounts that you pay to these seasonal farmworkers, however, count toward the \$2,500-or-more test to determine whether wages that you pay to other farmworkers are subject to social security and Medicare taxes.

## 7. How To Figure Social Security and Medicare Taxes

For wages paid in 2009, the social security tax rate is 6.2% and the Medicare tax rate is 1.45% for both the employer and the employee. Multiply each wage payment by these percentages to figure the tax to withhold from employees. For example, the social security tax on a wage payment of \$355 would be \$22.01 ( $\$355 \times .062$ ) each. The Medicare tax would be \$5.15 ( $\$355 \times .0145$ ) each. Employers match these amounts and report both the employee and employer shares on Form 941-SS, 944-SS, or Form 943 (farm employment). See section 5 for information on tips.

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

**Employee's portion of taxes paid by employer.** If you pay your employee's social security and Medicare taxes without deducting them from the employee's pay, you must include the amount of the payments in the employee's wages for social security and Medicare taxes. This increase in the employee's wage payment for your payment of the employee's social security and Medicare taxes is also subject to employee social security and Medicare

taxes. This again increases the amount of the additional taxes that you must pay.

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

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

## 8. Depositing Taxes

You must deposit social security and Medicare taxes if your tax liability (line 8 of Form 941-SS, line 7 of Form 944-SS, or line 11 of Form 943) is \$2,500 or more for the tax return period. You make the deposits either electronically or with paper coupons. These methods are discussed later.

### Payment with Return

You may make a payment with Form 941-SS, 944-SS, or Form 943 instead of depositing without incurring a penalty if one of the following applies.

- You report less than a \$2,500 tax liability during the return period (line 8 of Form 941-SS, line 7 of Form 944-SS, or line 11 of Form 943) and you pay in full with a timely filed return. However, if you are unsure that you will report less than \$2,500, deposit under the rules explained in this section so that you will not be subject to failure-to-deposit penalties.
- You are a monthly schedule depositor and make a payment in accordance with the *Accuracy of Deposits Rule* on page 10. This payment may be \$2,500 or more.

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



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

### When To Deposit

Under the rules discussed below, the only difference between farm and nonfarm workers' employment tax deposit

rules is the lookback period. Therefore, farm and nonfarm workers are discussed together except where noted.

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

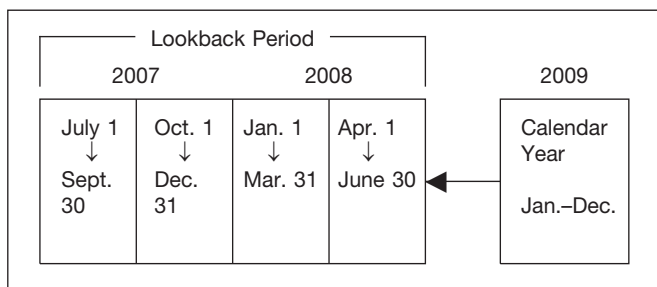
The terms “monthly schedule depositor” and “semiweekly schedule depositor” do not refer to how often you pay your employees or how often you are required to make deposits. The terms identify which set of rules that you must follow when a tax liability arises (for example, when you have a payday).

You will need to determine your deposit schedule for a calendar year based on the total employment taxes reported on line 8 of Form 941-SS, line 8 of Form 941, or line 9 of Form 943 for your lookback period (defined below). If you filed both Forms 941-SS and 941 during the lookback period, combine the tax liabilities for these returns for purposes of determining your deposit schedule. Determine your deposit schedule for Form 943 separately from Forms 941-SS and 941.

**Lookback period for employers of nonfarm workers.**

The lookback period for Form 941-SS (or Form 941) consists of four quarters beginning July 1 of the second preceding year and ending June 30 of the prior year. These four quarters are your lookback period even if you did not report any taxes for any of the quarters. For 2009, the lookback period is July 1, 2007, through June 30, 2008.

**Lookback Period for Calendar Year 2009**



The lookback period for Form 944-SS (or Form 944) is the second calendar year preceding the current calendar year. For example, the lookback period for calendar year 2009 is calendar year 2007. In addition, for employers who filed Form 944-SS (or Form 944) for 2007 or 2008 and will file Form 941-SS (or Form 941) for 2009, the lookback period for 2009 is the second calendar year preceding the current calendar year, that is, 2007.

**Lookback period for employers of farmworkers.** The lookback period for Form 943 is the second calendar year preceding the current calendar year. The lookback period for calendar year 2009 is calendar year 2007.

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

**Example.** An employer originally reported total taxes of \$45,000 for the lookback period. The employer discovered during January 2009 that the tax during the lookback period was understated by \$10,000 and corrected this error by filing Form 941-X for the quarter the error was

discovered in. The employer is a monthly schedule depositor for 2009 because the lookback period tax liabilities are based on the amounts originally reported, and they were \$50,000 or less.

**Deposit Period**

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

**Monthly Deposit Schedule**

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

**New employers.** Your tax liability for any quarter in the lookback period before the date you started or acquired your business is considered to be zero. Therefore, you are a monthly schedule depositor for the first calendar year of your business (but see the *\$100,000 Next-Day Deposit Rule* on page 10).

**Semiweekly Deposit Schedule**

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

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

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

**Semiweekly deposit period spanning two quarters.** If you have more than one pay date during a semiweekly period and the pay dates fall in different calendar quarters, you will need to make separate deposits for the separate liabilities.

**Example.** If you have a pay date on Wednesday, September 30, 2009 (third quarter), and another pay date on Friday, October 2, 2009 (fourth quarter), two separate deposits will be required even though the pay dates fall

within the same semiweekly period. Both deposits will be due on Wednesday, October 7, 2009 (three banking days from the end of the semiweekly deposit period).

## Examples of Monthly and Semiweekly Schedules

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

2008 Lookback Period	
3rd Quarter 2006	\$12,000
4th Quarter 2006	12,000
1st Quarter 2007	12,000
2nd Quarter 2007	<u>12,000</u>
	\$48,000
2009 Lookback Period	
3rd Quarter 2007	\$12,000
4th Quarter 2007	12,000
1st Quarter 2008	12,000
2nd Quarter 2008	<u>15,000</u>
	\$51,000

Rose Co. is a monthly schedule depositor for 2008 because its taxes for the four quarters in its lookback period (\$48,000 for the 3rd quarter of 2006 through the 2nd quarter of 2007) were not more than \$50,000. However, for 2009, Rose Co. is a semiweekly schedule depositor because the total taxes for the four quarters in its lookback period (\$51,000 for the 3rd quarter of 2007 through the 2nd quarter of 2008) exceeded \$50,000.

**Employers of farmworkers.** Red Co. reported taxes on its 2006 Form 943 (line 9) of \$48,000. On its 2007 Form 943 (line 9), it reported taxes of \$60,000.

Red Co. is a monthly schedule depositor for 2008 because its taxes for its lookback period (\$48,000 for calendar year 2006) were not more than \$50,000. However, for 2009, Red Co. is a semiweekly schedule depositor because the total taxes for its lookback period (\$60,000 for calendar year 2007) exceeded \$50,000.

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

## Deposits on Banking Days Only

If a deposit due date falls on a day that is not a banking day, the deposit is considered timely if it is made by the close of the next banking day. In addition to federal and state bank holidays, Saturdays and Sundays are treated as nonbanking days. For example, if a deposit is required to be made on Friday, but Friday is not a banking day, the deposit is considered timely if it is made by the following Monday (if Monday is a banking day).

Semiweekly schedule depositors will always have at least 3 banking days to make a deposit. That is, if any of the 3 weekdays after the end of a semiweekly period is a banking holiday, you will have 1 additional banking day to deposit. For example, if a semiweekly schedule depositor accumulated taxes for payments made on Friday and the following Monday is not a banking day, the deposit normally due on Wednesday may be made on Thursday (allowing 1 banking day to make the deposit).

## Application of Monthly and Semiweekly Schedules

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

**Monthly schedule example.** Green, Inc. is a seasonal employer and a monthly schedule depositor. It pays wages each Friday. During January 2009, it paid wages but did not pay any wages during February. Green, Inc. must deposit the combined tax liabilities for the January paydays by February 15. Green, Inc. does not have a deposit requirement for February (that is, due by March 15) because no wages were paid in February and, therefore, it did not have a tax liability for February.

**Semiweekly schedule example.** Blue Co., a semiweekly schedule depositor, pays wages on the last day of the month. Blue Co. will deposit only once a month because it pays wages only once a month, but the deposit will be made under the semiweekly deposit schedule as follows. Blue Co.'s tax liability for the February 27, 2009, (Friday) payday must be deposited by March 4, 2009 (Wednesday).

## \$100,000 Next-Day Deposit Rule

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

For purposes of the \$100,000 rule, do not continue accumulating taxes after the end of a deposit period. For example, if a semiweekly schedule depositor has accumulated taxes of \$95,000 on Tuesday and \$10,000 on Wednesday, the \$100,000 next-day deposit rule does not apply because the \$10,000 is accumulated in the next deposit period. Thus, \$95,000 must be deposited by Friday and \$10,000 must be deposited by the following Wednesday.

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



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

**Example.** Elm, Inc. started business on May 1, 2009. Because Elm, Inc. is a new employer, the taxes for its lookback period are considered to be zero; therefore, Elm, Inc. is a monthly schedule depositor. On May 12, Elm, Inc. paid wages for the first time and accumulated taxes of \$60,000. On May 15 (Friday), Elm, Inc. paid wages and accumulated taxes of \$50,000, for a total of \$110,000. Because Elm, Inc. accumulated \$110,000 on May 15, it must deposit \$110,000 by May 18 (Monday), the next banking day.

## Accuracy of Deposits Rule

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

1. Any deposit shortfall does not exceed the greater of \$100 or 2% of the amount of taxes otherwise required to be deposited, and
2. The deposit shortfall is paid or deposited by the shortfall makeup date as described below.

### Makeup date for deposit shortfall:

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

For example, if a semiweekly schedule depositor filing Form 941-SS has a deposit shortfall during June 2009, the shortfall makeup date is July 15, 2009 (Wednesday). However, if the shortfall occurred on the October 7 (Wednesday) deposit date for a September 30 pay date, the return due date for the September 30 pay date (November 2, 2009), would come before the November 18 (Monday) shortfall makeup date. In this case, the shortfall must be deposited by November 2.

## Employers of Both Farm and Nonfarm Workers

If you employ both farm and nonfarm workers, you must treat employment taxes for the farmworkers (Form 943 taxes) separately from employment taxes for the nonfarm

workers (Form 941-SS or Form 944-SS taxes). Form 943 taxes and Form 941-SS (or Form 944-SS) taxes are not combined for purposes of applying any of the deposit rules.

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

## How To Deposit

The two methods of depositing employment taxes are discussed next. See *Payment with Return* on page 8 for exceptions explaining when taxes may be paid with the tax return instead of being deposited.

**Electronic deposit requirement.** You must make electronic deposits of all depository taxes (such as employment tax, excise tax, and corporate income tax) using the Electronic Federal Tax Payment System (EFTPS) in 2009 if:

- Your total deposits of such taxes in 2007 were more than \$200,000 or
- You were required to use EFTPS in 2008.

If you are required to use EFTPS and fail to do so, you may be subject to a 10% failure-to-deposit penalty. EFTPS is a free service provided by the Department of the Treasury. If you are not required to use EFTPS, you may participate voluntarily. To get more information or to enroll in EFTPS, call 1-800-555-4477 toll free (U.S. Virgin Islands only) or 303-967-5916 (toll call). You can also visit the EFTPS website at [www.eftps.gov](http://www.eftps.gov).

**When you receive your EIN.** New employers that have a federal tax obligation will be pre-enrolled in EFTPS. Call the toll-free number located in your Employer Identification Number (EIN) Package to activate your enrollment and begin making your tax deposit payments. Be sure to tell your payroll provider about your EFTPS enrollment. Consider using EFTPS to make your other federal tax payments electronically.

**Depositing on time.** For deposits made by EFTPS to be on time, you must initiate the transaction at least 1 business day before the date that the deposit is due.

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

**Making deposits with FTD coupons.** If you are not making deposits by EFTPS, use Form 8109, Federal Tax Deposit Coupon, to make the deposits at an authorized financial institution.

For new employers, if you would like to receive a Federal Tax Deposit (FTD) coupon booklet, call 1-800-829-4933 toll free (U.S. Virgin Islands only), or 215-516-2000 (toll call). Allow 5 to 6 weeks for delivery. You should consider enrolling in EFTPS (see *When you receive your EIN* earlier) now because you may be required to make deposits before your FTD coupons arrive. The IRS will keep track of the number of FTD coupons that you use and automatically will send you additional coupons when you need them. If you do not receive your resupply of FTD coupons, call 1-800-829-4933 (U.S. Virgin Islands only), or 215-516-2000 (toll call). You can have the

FTD coupon books sent to a branch office, tax preparer, or service bureau that is making your deposits by showing that address on Form 8109-C, FTD Address Change, which is in the FTD coupon book. (Filing Form 8109-C will not change your address of record; it will change only the address where the FTD coupons are mailed.) The FTD coupons will be preprinted with your name, address, and EIN. They have spaces for indicating the type of tax and the tax period for which the deposit is made.

It is very important to clearly mark the correct type of tax and tax period on each FTD coupon. This information is used by the IRS to credit your account.

If you have branch offices depositing taxes, give them FTD coupons and complete instructions so that they can deposit the taxes when due.

Please use only your FTD coupons. If you use anyone else's FTD coupon, you may be subject to a failure-to-deposit penalty. This is because your account will be underpaid by the amount of the deposit credited to the other person's account. See *Deposit Penalties* on page 12 for amounts.

**How to deposit with an FTD coupon.** Mail or deliver each FTD coupon and a single payment covering the taxes to be deposited to an authorized depository. An authorized depository is a financial institution (for example, a commercial bank) that is authorized to accept federal tax deposits. Follow the instructions in the FTD coupon book. Make your check or money order payable to the depository. To help ensure proper crediting of your account, include your EIN, the type of tax (for example, Form 941-SS), and the tax period to which the payment applies on your check or money order.

Authorized depositories must accept cash, a postal money order drawn to the order of the depository, or a check or draft drawn on and to the order of the depository. You may deposit taxes with a check drawn on another financial institution only if the depository is willing to accept that form of payment. Be sure that the financial institution where you make deposits is an authorized depository. Deposits made at an unauthorized institution may be subject to the failure-to-deposit penalty.

If you prefer, you may mail your coupon and payment to: Financial Agent, Federal Tax Deposit Processing, P.O. Box 970030, St. Louis, MO 63197. Make your check or money order payable to "Financial Agent."

**Depositing on time.** The IRS determines whether deposits are on time by the date that they are received by an authorized depository. To be considered timely, the funds must be available to the depository on the deposit due date before the institution's daily cutoff deadline. However, a deposit received by the authorized depository after the due date will be considered timely if the taxpayer establishes that it was mailed in the United States (including U.S. Territories) in a properly addressed, postage prepaid envelope at least 2 days before the due date.

If you hand deliver your deposit to the depository on the due date, be sure to deliver it before the depository's daily cutoff deadline.



*If you are required to deposit any taxes more than once a month, any deposit of \$20,000 or more must be received by the authorized depository by its due date to be timely. See section 7502(e)(3) for more information.*

**Depositing without an EIN.** If you have applied for an EIN but have not received it and you must make a deposit, make the deposit with the IRS. Do not make the deposit at an authorized depository. Make it payable to the "United States Treasury" and show on it your name (as shown on Form SS-4), address, kind of tax, period covered, and the date that you applied for an EIN. Send your deposit with an explanation to your local IRS office or the IRS service center where you will file Form 941-SS, Form 944-SS, Form 943, or Form 940. The service center addresses are provided in the separate instructions for Forms 941-SS, Form 944-SS, 943, and 940 and are also available on the IRS website at [www.irs.gov](http://www.irs.gov). Do not use Form 8109-B, Federal Tax Deposit Coupon, in this situation.

**Depositing without Form 8109.** If you do not have a preprinted Form 8109, you may use Form 8109-B to make deposits. Form 8109-B is an over-the-counter FTD coupon that is not preprinted with your identifying information. You may get this form by calling 1-800-829-4933 (U.S. Virgin Islands only), or 215-516-2000 (toll call). Be sure to have your EIN ready when you call. You will not be able to obtain Form 8109-B by calling 1-800-TAX-FORM.

Use Form 8109-B to make deposits only if:

- You are a new employer and you have been assigned an EIN, but you have not received your initial supply of preprinted Forms 8109, or
- You have not received your resupply of preprinted Forms 8109.

**Deposit record.** For your records, a stub is provided with each FTD coupon in the coupon book. The FTD coupon itself will not be returned. It is used to credit your account. Your check, bank receipt, or money order is your receipt.

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

## Deposit Penalties

Penalties may apply if you do not make required deposits on time, if you make deposits of less than the required amount, or if you do not use EFTPS when required. 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. IRS may also waive penalties if you inadvertently fail to deposit in the first quarter that a deposit is due, or the first quarter during which your frequency of deposits changed, if you timely filed your employment tax return.

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

**2%** - Deposits made 1 to 5 days late.

**5%** - Deposits made 6 to 15 days late.

**10%** - Deposits made 16 or more days late. Also applies to amounts paid within 10 days of the date of the first notice that 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 (but see *Depositing without an EIN* above and *Payment with Return* on page 8 for exceptions).

**10%** - Amounts subject to electronic deposit requirements but not deposited using EFTPS.

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

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

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

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

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

**Trust fund recovery penalty.** If federal income, social security, and Medicare taxes that must be withheld are not withheld or are not deposited or paid to the United States Treasury, the trust fund recovery penalty may apply. The penalty is the full amount of the unpaid trust fund tax. This penalty may apply to you if these unpaid taxes cannot be immediately collected from the employer or business.

The trust fund recovery penalty may be imposed on all persons who are determined by the IRS to be responsible for collecting, accounting for, and paying over these taxes, and who acted willfully in not doing so.

A **responsible person** can be an officer or employee of a corporation, a partner or employee of a partnership, an accountant, a volunteer director/trustee, or an employee of a sole proprietorship, or any other person or entity that is responsible for collecting, accounting for, and paying over trust fund taxes. A responsible person also may include one who signs checks for the business or otherwise has authority to cause the spending of business funds.

**Willfully** means voluntarily, consciously, and intentionally. A responsible person acts willfully if the person knows the required actions are not taking place.

**“Averaged” failure-to-deposit penalty.** IRS may assess an “averaged” failure-to-deposit (FTD) penalty of 2% to 10% if you are a monthly schedule depositor and did not properly complete line 15 of Form 941-SS when your tax liability (line 8) shown on Form 941-SS was \$2,500 or more. IRS may also assess this penalty of 2% to 10% if you are a semiweekly schedule depositor and your tax liability (line 8) shown on Form 941-SS was \$2,500 or more and you did any of the following.

- Completed line 15 of Form 941-SS instead of Schedule B (Form 941).
- Failed to attach a properly completed Schedule B (Form 941).
- Completed Schedule B (Form 941) incorrectly, for example, by entering tax deposits instead of tax liabilities in the numbered spaces.

IRS figures the penalty by allocating your total tax liability on line 8 of Form 941-SS, equally throughout the tax period. Your deposits and payments may not be counted as timely because IRS does not know the actual dates of your tax liabilities.

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

- If you are a monthly schedule depositor, report your tax liabilities (not your deposits) in the monthly entry spaces on line 15.
- If you are a semiweekly schedule depositor, report your tax liabilities (not your deposits) on Schedule B (Form 941) in the lines that represent the dates you paid your employees.
- Verify that your total liability shown on line 15 of Form 941-SS or the bottom of Schedule B (Form 941) equals your tax liability shown on line 8 of Form 941-SS.
- Do not show negative amounts on line 15 or Schedule B (Form 941). If a prior period adjustment results in a decrease in your tax liability, reduce your liability for the day you discovered the error by the tax decrease resulting from the error, but not below zero. Apply any remaining decrease to subsequent liabilities.
- For prior period errors discovered after December 31, 2008, **do not** adjust your tax liabilities reported on line 15 or on Schedule B (Form 941).



*If you filed Form 944-SS for 2008 and line 7 was \$2,500 or more, you were required to complete lines 13a through 13m on Form 944-SS or attach Form 945-A, Annual Record of Federal Tax Liability. If you failed to complete lines 13a through 13m or failed to attach Form 945-A, whichever was required, IRS may assess an “averaged” failure-to-deposit (FTD) penalty.*

## 9. Employer's Returns

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

The IRS sends each employer a form preaddressed with name, address, and EIN. If the form fails to reach you, request one in time to file. If you use a form that is not preaddressed, enter your name and EIN exactly as they appeared on previous returns.

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

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

However, if you deposited all taxes when due for the quarter, you have 10 additional days from the due dates above to file the return. If the due date for filing your return falls on a Saturday, Sunday, or legal holiday, you may file on the next business day.

If you closed your business or stopped paying wages and do not have to file returns in the future, check the box on line 16 of your final Form 941-SS and show the date final wages were paid.

**Form 944-SS.** If IRS notified you to file Form 944-SS, file your 2008 Form 944-SS by February 2, 2009, or by February 10, 2009, if you deposited all taxes when due.

**Household employers reporting social security and Medicare taxes.** If you are a sole proprietor and file Form 941-SS (or Form 944-SS) for business employees, you may include taxes for household employees on your Form 941-SS (or Form 944-SS). Otherwise, report social security and Medicare taxes for household employees on Schedule H (Form 1040), Household Employment Taxes. See Publication 926, Household Employer's Tax Guide, for more information.

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

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

Send Form 943 to the IRS by January 31 of the following year. Send it with payment of any taxes due that you are not required to deposit. If you deposited all taxes when due, you have 10 additional days to file.

If you receive a Form 943 for a year in which you are not required to file, write "NONE" on line 11 of the form, sign the form, and send it back to the IRS. If at that time you do not expect to meet either test in section 6 in the future, check the final return box above line 1. If you later become liable for any of the taxes, notify the IRS.

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

### Reporting Corrections to Form 941-SS, Form 944-SS, or Form 943



*There is a new process for correcting errors on a previously filed Form 941-SS, Form 944-SS, beginning with errors discovered in 2009. Corrections to previously filed Form 941-SS, Form 944-SS, or Form 943 will be made on new Form 941-X, new Form 944-X, or new Form 943-X. For more information, see the Instructions for Form 941-X, Instructions for Form 944-X, or the Instructions for Form 943-X.*

### Current Period Adjustments

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

### Prior Period Adjustments — Reporting Errors Discovered Before January 1, 2009

If you discover an error **before January 1, 2009** on a previously filed Form 941-SS, Form 944-SS, or Form 943, make the correction using the instructions below.

Generally, you can correct errors on a previously filed return by making an adjustment on Form 941-SS, Form 944-SS, or Form 943 for the tax period (quarter or year) during which the error was discovered. For example, if you made an error reporting social security tax on your second quarter 2007 Form 941-SS and discovered the error during December 2008, correct the error by making an adjustment on your fourth quarter 2008 Form 941-SS. (If IRS

notified you to file Form 944-SS, correct the error by making an adjustment on your 2008 Form 944-SS).

The adjustment increases or decreases your tax liability for the period in which it is reported (the quarter or year the error is discovered) and is, generally, interest free. The adjustments reported on Form 941-SS, Form 944-SS, or Form 943 may include any number of corrections for one or more previous quarters (or years), including both overpayments and underpayments.

You are required to provide background information and certifications supporting prior period adjustments. File Form 941c, Supporting Statement To Correct Information, with Form 941-SS, Form 944-SS, or Form 943, or attach an equivalent supporting statement.

Do not file Form 941c separately from Form 941-SS, Form 944-SS, or Form 943. Form 941c is not an amended return. It is used to provide necessary certifications and background information to support the adjustments made on Form 941-SS, Form 944-SS, or Form 943.

The Instructions for Form 941-SS, Form 944-SS, and Form 943 explain how to correct mistakes in reporting withheld social security and Medicare taxes, including the use of Form 941c. You may claim a refund for overwithheld social security and/or Medicare taxes on Form 843, Claim for Refund and Request for Abatement. Decreases in tax liability shown on Form 843 will be refunded with interest.

**Special additions to tax liability.** Line 7g of Form 941-SS (line 6e of Form 944-SS) is reserved for employers with special circumstances. Use this line only if the IRS sent you a notice instructing you to do so.

## Prior Period Adjustments—Reporting Errors Discovered After December 31, 2008

If you discover an error on a previously filed Form 941-SS, Form 944-SS, or Form 943 **after December 31, 2008**, make the correction using new Form 941-X, 944-X, or Form 943-X. Also use these new forms to correct any errors not previously reported. (Do not use Form 941c.) File a separate Form 941-X, 944-X, or Form 943-X for each prior period you are correcting. File Form 941-X, Form 944-X, or Form 943-X separately. **Do not** attach Form 941-X, Form 944-X, or Form 943-X to your current period Form 941-SS, Form 944-SS, or Form 943.

**Underpayments.** Generally, correction of an underpayment will not be subject to interest if:

- You file Form 941-X, Form 944-X, or Form 943-X on time;
- You pay the balance due by the time you file Form 941-X, Form 944-X, or Form 943-X;
- You enter the date the error was discovered; and
- You provide in detail the grounds and facts relied on to support the correction.

Therefore, when you discover that you underreported and underpaid tax on a previously filed return, you must file Form 941-X, Form 944-X, or Form 943-X no later than the due date of the return for the period during which you discovered the error and pay any amount due by the time

you file to qualify for interest-free treatment of the correction. For example, you discover on June 15, 2009, that you underreported \$10,000 of social security and Medicare wages on your 2008 first quarter Form 941-SS. You owe \$1,530 on the 2008 first quarter Form 941-SS. To qualify for an interest-free adjustment, you must file Form 941-X by July 31, 2009 and pay the \$1,530 owed by the time Form 941-X is filed. You must pay by using EFTPS or by sending a check with the form. For Forms 941-X, 944-X, and Form 943-X, credit card payments are also accepted.

**Exceptions to interest-free corrections of employment taxes.** A correction will **not** be eligible for interest-free treatment if

- the amount underreported relates to an issue that was raised in an IRS examination of a prior return,
- you knowingly underreported your employment tax liability,
- you received a notice and demand for payment after assessment, or
- you received an IRS Notice of Determination of Worker Classification.

**Overpayments.** Employers have a choice when correcting overpayments. You can choose to make an adjustment and have the overpayment amount applied as a credit to the quarter (or year for annual return filers) in which Form 941-X, Form 944-X, or Form 943-X is filed, or you can choose to claim a refund of the overpayment. See the chart on the back of Form 941-X, Form 944-X, or Form 943-X to help in choosing whether to file an adjusted employment tax return or to file claim for refund.

Employers will no longer use Form 843, Claim for Refund or Request for Abatement, to request a refund or abatement of overreported social security or Medicare taxes. Instead, request your refund or abatement of taxes on Form 941-X, Form 944-X, or Form 943-X. However, use Form 843 when requesting a refund or abatement of assessed interest or penalties.

For additional information about the new process for correcting employment taxes, get the Instructions for Form 941-X, Instructions for Form 944-X, or Instructions for Form 943-X. See *How To Get Forms and Publications* on page 4. See also Treasury Decision 9405. You can find Treasury Decision 9405 on page 293 of Internal Revenue Bulletin 2008-32 at [www.irs.gov/pub/irs-irbs/irb08-32.pdf](http://www.irs.gov/pub/irs-irbs/irb08-32.pdf). You can also visit the IRS website at [www.irs.gov](http://www.irs.gov) and enter "Correcting Employment Taxes" in the search box.

**Collecting underwithheld taxes from employees.** If you withhold no social security tax, Medicare tax, or less than the correct amount of either tax from an employee's wages, you can make it up by withholding from later pay to that employee. However, you are responsible for the underpayment. Any reimbursement from the employee's own funds for amounts not collected must be agreed to by you and the employee. See Section 5 for special rules for tax on tips.

**Amounts incorrectly withheld from employees.** If you withhold more than the correct amount of social security tax or Medicare tax from wages paid, and discover the error before filing Form 941-SS, Form 944-SS, or Form

943, repay or reimburse the employee the amount overwithheld before filing the return.

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

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

For an overcollection reported on a previously filed form 941-SS, Form 944-SS, or Form 943, an employer is required to repay or reimburse its employees prior to filing an adjusted employment tax return. Employers filing claims for refund of overpaid social security and Medicare taxes may either repay or reimburse the employees their share of FICA tax first or get employee consents to file the claim for the excess tax on their behalf. Employers must retain the written receipt of the employee showing the date and amount of the repayment, record of reimbursement, or the written consent of the employee.

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## 10. Wage and Tax Statements

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

**Note.** Employers in the Commonwealth of the Northern Mariana Islands should contact their local tax department for instructions on completing Form W-2CM.

**When and where to file electronically.** If you are required to file 250 or more Forms W-2AS, W-2CM, W-2GU, or Form W-2VI, you must file electronically. See the Instructions for Forms W-2AS, W-2GU, W-2VI and Form W-3SS or call the Social Security Administration (SSA) at 1-800-772-6270 for more information. You may also visit Social Security's Employer Reporting Instructions and Information website at [www.socialsecurity.gov/employer](http://www.socialsecurity.gov/employer). File your 2008 wage and tax statements electronically by March 31, 2009.

**When and where to file paper forms.** By March 2, 2009 (or when filing a final return if you make final payments before the end of the year), send your completed forms to the following locations.

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

Northern Mariana Islands should contact their local tax department for instructions on how to file Copy 1.

If you need copies of Forms W-2AS, W-2CM, W-2GU, W-2VI, and W-3SS, see *How To Get Forms and Publications* on page 4.

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

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

**Correcting Forms W-2AS, W-2CM, W-2GU, W-2VI, and W-3SS.** If you need to correct a Form W-2AS, W-2CM, W-2GU, or Form W-2VI after you have sent Copy A to the SSA, use Form W-2c, Corrected Wage and Tax Statement. Furnish employees Copies B and C of Form W-2c. Send Copy A with Form W-3c, Transmittal of Corrected Wage and Tax Statements, to the SSA at the address shown on Form W-3c.

If a form is corrected before you send Copy A to the SSA, furnish the employee the corrected copies. Mark the original Copy A "Void" in the proper box and send the new Copy A as explained above. Only send the new Copy A to SSA; do not send the Copy A marked "Void." For more information, see the Instructions for Forms W-2 and W-3.

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

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

You must file Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, if you are subject to FUTA tax under the following rules.

**In general.** You are subject to FUTA tax in 2009 on the wages you pay employees who are not farmworkers or household workers if:

1. You paid wages of \$1,500 or more in any calendar quarter of 2008 or 2009, or
2. You had one or more employees for at least some part of a day in any 20 or more different weeks in 2008 or 20 or more different weeks in 2009.

**Household workers.** You are subject to FUTA tax only if you paid total cash wages of \$1,000 or more (for all household workers) in any calendar quarter in 2008 or 2009.

**Farmworkers.** You are subject to FUTA tax on the wages that you pay to farmworkers in 2009 if:

- You paid total cash wages of \$20,000 or more for the farmwork in any calendar quarter to farmworkers during 2008 or 2009, or
- You employed 10 or more farmworkers during at least some part of a day (whether or not at the same time) during any 20 or more different weeks in 2008 or 20 or more different weeks in 2009.

To determine whether you meet either test above, you must count wages paid to aliens admitted on a temporary basis to the United States to perform farmwork, also known as “H-2(A)” visa workers. However, wages paid to “H-2(A)” visa workers are not subject to the FUTA tax.

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

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

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

**Computing FUTA rate.** The FUTA tax rate for 2009 is 6.2% of the first \$7,000 of wages that you pay to each employee during the calendar year. Only the employer pays this tax. Do not deduct it from employees’ wages. Generally, you may take a credit of 5.4% against the FUTA tax for payments to U.S. Virgin Islands unemployment funds. Therefore, your actual tax rate is usually 0.8% (6.2% – 5.4%) for 2009. However, your credit is reduced if you did not pay all required U.S. Virgin Islands unemployment tax by the due date of Form 940. The credit cannot be more than 5.4% of taxable FUTA wages.



*The 6.2 % FUTA tax rate which was scheduled to decrease to 6.0% after 2008, has been extended through calendar year 2009.*

**Form 940.** By January 31, file Form 940. If you made all FUTA tax deposits on time, you have 10 additional calendar days to file. Once you have filed Form 940, the IRS will send you a preaddressed form.

**Deposits.** If you are not making deposits using EFTPS (see section 8), deposit the FUTA tax with an authorized financial institution. Send a deposit coupon (Form 8109) with each payment.

Figure your liability for FUTA tax deposits quarterly. For 2008, multiply by .008 (0.8%) the amount of wages paid during the quarter to employees who have not exceeded \$7,000 in wages for the calendar year. Stop depositing FUTA tax on an employee’s wages when his or her wages exceed \$7,000 for the calendar year. If any part of the first \$7,000 paid to employees is exempt from U.S. Virgin Islands unemployment taxes, you may be required to deposit an amount in excess of the .008 rate. If this amount (plus any undeposited amount from earlier quarters) is more than \$500, deposit it by the last day of the first month after the end of the quarter. If the result is \$500 or less, add it to the FUTA tax for the next quarter, and do not make a deposit. Make this calculation for each of the first 3 quarters of the year.

If the FUTA tax reportable on Form 940 minus the amounts deposited for the first 3 quarters is more than \$500, deposit the tax by January 31. If the result is \$500 or less, you may either deposit the tax or pay it with Form 940 by January 31.

## 12. Special Rules for Various Types of Employment and Payments

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

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

\* Wages for services not considered farmwork are reported on Form 941-SS or Form 944-SS. Other exemptions may apply. See sections 4 and 9.

\*\* Benefits provided under cafeteria plans may qualify for exclusion from wages for social security, Medicare, and FUTA taxes.

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes	
	Social Security and Medicare	Federal Unemployment (U.S. Virgin Islands Only)
<b>Aliens (continued):</b>		
2. Nonresidents working in U.S.*		
a. Workers lawfully admitted under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act on a temporary basis to perform agricultural labor ("H-2(A)" workers).	Exempt.	Exempt.
b. Student, scholar, trainee, teacher, etc. as nonimmigrant alien under section 101(a)(15)(F),(J), (M), or (Q) or Philippine or Korean resident admitted to Guam or CNMI under section 101(a)(15)(H)(ii) of the Immigration and Nationality Act or parallel provision of immigration law in CNMI.	Exempt if service is performed for the purpose of specified in section 101(a)(15)(F), (H), (J), (M), or (Q) of the Immigration and Nationality Act parallel provisions of immigration law in CNMI. However, these taxes may apply if the employee becomes a resident alien. For Korean residents, this exemption applies to the extent consistent with US-Korea income tax treaty.	
c. All other nonresidents working in U.S.*	Same as U.S. citizen; exempt if any part of service as crew member of foreign vessel or aircraft is performed outside U.S. and employer is not American employer.	Same as U.S. citizen.
3. Nonresident working on American vessel or aircraft outside U.S.*	Taxable if under contract made in U.S. or worker is employed on vessel or aircraft when it touches U.S. port.	
<b>Deceased worker's wages:</b>		
1. Paid to beneficiary or estate in calendar year of worker's death.	Taxable.	Taxable.
2. Paid to beneficiary or estate after the year of worker's death.	Exempt.	Exempt.
<b>Dependent care assistance programs</b> (limited to \$5,000; \$2,500 if married filing separately).	Exempt to the extent that it is reasonable to believe that amounts will be excludable from gross income under Internal Revenue Code (IRC) section 129.	
<b>Disabled worker's wages paid after the year in which worker became entitled to disability insurance benefits under the Social Security Act.</b>	Exempt if worker did not perform any service for employer during period for which payment is made.	Taxable.
<b>Domestic service in college clubs, fraternities, and sororities.</b>	Exempt if paid to regular student; also exempt if employee is paid less than \$100 in a year by an income-tax-exempt employer.	Taxable if employer paid total cash wages of \$1,000 or more (for all household employees) in any calendar quarter in the current or preceding year.
<b>Employee achievement awards.</b>	Exempt to the extent it is reasonable to believe the amounts will be excludable from gross income under IRC section 74(c).	
<b>Family employees:</b>		
1. Child employed by parent (or by partnership in which each partner is a parent of the child).	Exempt until age 18.	Exempt until age 21.
2. Child employed by parent for domestic work or not in the course of a trade or business.	Exempt until age 21.	Exempt until age 21.
3. Parent employed by child.	Taxable if in course of the child's business. For household work in private home of child, see Pub. 926.	Exempt.
4. Spouse employed by spouse.	Taxable if in course of spouse's business.	Exempt.
<b>Federal employees:</b>		
1. Members of uniformed services; Young Adult Conservation Corps, Job Corps, or National Volunteer Antipoverty Program; Peace Corps volunteers and volunteer leaders.	Taxable	Exempt.
2. All others.	Taxable if employee is covered by FERS or has a break in service of more than one year (unless the break in service was for temporary military or reserve duty). Others generally subject to Medicare tax.	Exempt unless worker is a seaman performing services on or in connection with American vessel owned by or chartered to the United States and operated by general agent of Secretary of Commerce.

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

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes	
	Social Security and Medicare	Federal Unemployment (U.S. Virgin Islands Only)
<b>Fishing and related activities, employment in connection with catching, harvesting, farming, etc.:</b> 1. Salmon or halibut. 2. Other fish and other aquatic forms of animal and vegetable life. 3. An arrangement with the owner or operator of the boat by which the individual receives a share of the boat's catch (or proceeds from the sale of the catch), the share depending on the boat's catch, and operating crew of the boat is normally fewer than 10 individuals.*	Taxable unless 3 applies. Taxable unless 3 applies. Exempt if any cash remuneration is: (a) \$100 or less, (b) contingent on minimum catch, and (c) paid solely for additional duties (such as mate, engineer, or cook for which cash remuneration is traditional).	Taxable unless 3 applies. Exempt unless on vessel of more than 10 net tons and 3 does not apply.
<b>Foreign governments and international organizations.</b>	Exempt.	Exempt.
<b>Foreign service by U.S. citizens:</b> 1. As U.S. Government employee. 2. For foreign affiliates or subsidiaries of American employers and other private employers.	Same as within U.S. Exempt unless (a) an American employer by agreement with the IRS covers U.S. citizens employed by its foreign affiliates or subsidiaries or (b) U.S. citizen works for American employer.	Exempt. See also <i>Federal employees</i> on page 18. Exempt unless (a) on American vessel or aircraft and work is performed under contract made in U.S. or worker is employed on vessel when it touches U.S. port, or (b) U.S. citizen works for American employer (except in a contiguous country with which the U.S. has an agreement for unemployment compensation) or in the U.S. Virgin Islands.
<b>Fringe benefits.</b>	Taxable on excess of fair market value of the benefit over the sum of an amount paid for it by the employee and any amount excludable by law. However, optional special valuation rules may apply.** See Publication 15-B for details.	
<b>Government employees</b> (other than federal).  U.S. Virgin Islands.  American Samoa and political subdivisions.  Guam and Commonwealth of Northern Mariana Islands and political subdivisions.	(See IRC section 3121(b)(7) or visit <a href="http://www.socialsecurity.gov">www.socialsecurity.gov</a> . Taxable if covered by Section 218 Agreement with SSA. Taxable, unless employee covered by a retirement system. Exempt, except for certain temporary and intermittent employees.	Exempt.  Exempt  Exempt
<b>Group-term life insurance costs.</b> See Pub. 15-B for details.	Exempt, except for the cost of premiums that provide more than \$50,000 coverage.	Exempt.
<b>Homeworkers</b> (industrial, cottage-industry): 1. Common law employees. 2. Statutory employees. See section 1.	Taxable. Taxable if paid \$100 or more in cash in a year.	Taxable. Exempt.
<b>Hospital interns.</b>	Taxable.	Exempt.
<b>Household workers</b> (domestic service in private homes). Also see <i>Domestic service in college clubs, fraternities, and sororities</i> on page 18.	Taxable if paid \$1,700 or more in cash in 2009. Exempt if performed by an individual who is under age 18 during any part of the calendar year and the work is not the principal occupation of the employee.	Taxable if employee paid total cash wages of \$1,000 or more (for all household employees) in any calendar quarter in the current or preceding year.
<b>Insurance agents or solicitors:</b> 1. Full-time life insurance salesperson. 2. Other salesperson of life, casualty, etc., insurance.	Taxable. Taxable only if employee under common law.	Taxable if employee under common law and not paid solely by commissions (applies to both 1 and 2).
<b>Interest foregone on below-market loans related to compensation and deemed original issue discount.</b> See IRC section 7872 and its regulations for details.	See Pub. 15-A.	
<b>Meals and lodging furnished free or at a discounted price to the employee.</b> For household employees, agricultural labor, and service not in the course of the employer's trade or business, see <i>Noncash payments</i> on page 21.	(a) Meals — Taxable unless furnished for employer's convenience and on the employer's premises. For information on the de minimis fringe exclusion, see IRC section 132(e). (b) Lodging — Taxable unless furnished on employer's premises, for the employer's convenience, and as condition of employment.	
<b>Ministers of churches performing duties as such.</b>	Exempt.	Exempt.

\* Income derived by Native Americans exercising fishing rights is generally exempt from employment taxes.

\*\* Benefits provided under cafeteria plans may qualify for exclusion from wages for social security, Medicare, and FUTA taxes.

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes	
	Social Security and Medicare	Federal Unemployment (U.S. Virgin Islands Only)
<b>Moving expense reimbursement:</b> 1. Qualified expenses. 2. Nonqualified expenses.	Exempt unless you have knowledge that the employee deducted the expenses in a prior year. Taxable.	Taxable. Taxable.
<b>Newspaper carrier under age 18 delivering directly to readers.</b>	Exempt.	Exempt.
<b>Newspaper and magazine vendors buying at fixed prices and retaining excess from sales to customers.</b>	Exempt.	Exempt.
<b>Noncash payments:</b> 1. For household work, agricultural labor, and service not in the course of the employer's trade or business. 2. To certain retail commission salespersons ordinarily paid solely on a cash commission basis.	Exempt. Taxable.	Exempt. Taxable.
<b>Nonprofit organizations:</b> 1. Religious, educational, charitable, etc., organizations described in IRC section 501(c)(3) exempt from income tax under IRC 501(a). 2. Corporations organized under Act of Congress described in IRC section 501(c). 3. Other organizations exempt under IRC section 501(a) (other than a pension, profit-sharing, or stock bonus plan described in IRC section 401(a)) or under IRC section 521.	Taxable if paid \$100 or more in a year. (See Form 8274, Certification by Churches and Qualified Church-Controlled Organizations Electing Exemption From Employer Social Security and Medicare Taxes, for election out of social security and Medicare coverage for certain churches and church-controlled organizations.) Taxable if employee is paid \$100 or more in a year unless services excepted by IRC section 3121(b)(5) or (6). Taxable if employee is paid \$100 or more in a year.	Exempt. Taxable if employee is paid \$50 or more in a quarter unless services excepted by IRC section 3306(c)(6). Taxable if employee is paid \$50 or more in a quarter.
<b>Partners:</b> Bona fide members of a partnership.	Exempt.	Exempt.
<b>Patients employed by hospitals.</b>	Taxable (exempt for state or local government hospitals).	Exempt.
<b>Religious orders: Members who are instructed by the order to perform services:</b> 1. For the order, agency of the supervising church, or associated institution. 2. For any organization other than those described in 1 above.	Exempt unless member has taken a vow of poverty and the religious order or its autonomous subdivision irrevocably elects coverage for entire active membership. Taxable.	Exempt. Taxable.
<b>Retirement and pension plans:</b> 1. Employer contributions to a qualified plan. 2. Elective employee contributions and deferrals to a plan containing a qualified cash or deferred compensation arrangement (for example, 401(k)). 3. Employee salary reduction contributions to a SIMPLE retirement account. 4. Employer contributions to individual retirement accounts under a simplified employee pension (SEP) plan. 5. Employer contributions to IRC section 403(b) annuity contracts.	See Pub. 15-A for details and information on employer contributions to nonqualified deferred compensation arrangements. Exempt. Taxable. Taxable. Exempt except for amounts contributed under a salary reduction SEP agreement. Taxable if paid through a salary reduction agreement (written or otherwise).	Exempt. Taxable. Taxable.

Special Classes of Employment and Special Types of Payments	Treatment Under Employment Taxes	
	Social Security and Medicare	Federal Unemployment (U.S. Virgin Islands Only)
<b>Retirement and pension plans: (continued)</b>		
6. Distributions from qualified retirement and pension plans and section 403(b) annuities.	Exempt.	Exempt.
<b>Salespersons:</b>		
1. Common law employees.	Taxable.	Taxable.
2. Statutory employees (referred to in section 1).	Taxable.	Taxable except for full-time life insurance sales agents.
3. Statutory nonemployees (qualified real estate agents and direct sellers).	Exempt. Treated as self-employed individuals if substantially all payments directly related to sales or other output and services performed as nonemployees specified in written contract. Direct sellers must be in the business of selling consumer products other than in a permanent retail place of business.	
<b>Scholarships and fellowship grants</b> (includible in income under section 117(c)).	Taxability depends on the nature of the employment and the status of the organization. See <i>Students</i> below.	
<b>Severance or dismissal pay.</b>	Taxable.	Taxable.
<b>Service not in the course of the employer's trade or business</b> , other than on a farm operated for profit or for household employment in private homes.	Taxable if employee is paid \$100 or more in cash in a year.	Taxable only if employee is paid \$50 or more in cash in a quarter and works on 24 or more different days in that quarter or in the preceding quarter.
<b>Sickness or injury payments under:</b>		
1. Worker's compensation law.	Exempt.	Exempt.
2. Certain employer plans.	Exempt after end of six calendar months after calendar month employee last worked for employer (applies to both 2 and 3). See Pub. 15-A for details.	
3. No employer plan.		
<b>Students:</b>		
1. Student enrolled and regularly attending classes (generally, at least half time or equivalent) while pursuing course of study, performing services for:		
a. Private school, college, or university.	Exempt.	Exempt.
b. Auxiliary nonprofit organization operated for and controlled by school, college, or university.	Exempt unless services are covered by a section 218 (Social Security Act) agreement.	Exempt.
c. Public school, college, or university.	Exempt unless services are covered by a section 218 (Social Security Act) agreement.	Exempt.
2. Full-time student performing service for academic credit, combining academic instruction with work experience as an integral part of the program.	Taxable.	Exempt unless program was established for or on behalf of an employer or group of employers.
3. Student nurse performing part-time services for nominal earnings at hospital as incidental part of training.	Exempt.	Exempt.
4. Student employed by organized camps.	Taxable.	Exempt.
<b>Supplemental unemployment compensation benefits.</b>	Exempt under certain conditions. See Pub. 15-A.	
<b>Tips:</b>		
1. If \$20 or more in a month.	Taxable.	Taxable for all tips reported in writing to employer.
2. If less than \$20 in a month.	Exempt.	Exempt.
<b>Worker's compensation.</b>	Exempt.	Exempt.



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## Where To Get and File Social Security Number Application Forms

**U.S. Virgin Islands**—St. Thomas: Social Security Administration Office, 8000 Nisky Center, First Floor, Suite 2, Charlotte Amalie, VI 00802. St. Croix: Social Security Administration, 1, 2, & 3A Sunny Isle Shopping Center, Christiansted, VI 00820.

**Guam**—Social Security Administration Office, Suite 300, 655 Harmon Loop Road, Dededo, GU 96929.

**American Samoa**—Social Security Administration Office, Pago Plaza, Suite 117, Pago Pago, AS 96799.

**Commonwealth of the Northern Mariana Islands**—Social Security Administration Office, Suite 201, MH II Building, Garapan, Saipan, MH 96950.

**Form SS-5**, Application for a Social Security Card, can also be obtained from the Social Security website at [www.socialsecurity.gov](http://www.socialsecurity.gov).

Working people in the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, like those working in the United States, are now building protection for themselves and their families under the Social Security program. The three kinds of monthly benefits under Social Security are:

1. Retirement—at age 65 or older depending on your date of birth. (Reduced benefits are payable as early as age 62.)
  2. Disability—when a worker under age 65 becomes unable to work because of a disability.
  3. Survivors—when a worker dies.
- In addition to cash benefits, health insurance benefits are available for certain categories of people, whether or not they are retired.

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