

11<sup>th</sup> Annual Local Government  
Officials Conference

By John L. Darr  
April 7 and 8<sup>th</sup>, 2010

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Topics of the Day

- Cobra Premium Assistance credit
- Military pay differential
- Fringe Benefits
- Difference between a compliance check and an audit

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COBRA Rules

Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1985 provided:

- Employees involuntarily terminated
- Stay on Employer health care plan
- up to 18 months
- Employee paid 100% premium

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## COBRA Premium Assistance

American Recovery and Reinvestment Act (ARRA) of 2009

- Employer pays 65% of premium
- Gets reimbursed by the government
- Was up to 9 months – Now 15 months
- Credit against employment tax due
  - Offset deposits required to be made or
  - Request refund

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## More COBRA – ARRA info

- Effective 1<sup>st</sup> quarter 2009
- Employee separation must occur between 9/1/2008- 12/31/2009 (Now 2/28/2010)
- Maintain supporting documentation
  - Copy of insurance invoice
  - Receipt of payment (35%) from employee
  - Declaration of involuntary separation
  - List of workers covered and SSNs

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Military Differential  
Pay

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Military Pay Differential

- Payment made by employer to worker
- Worker called to active duty > 30 days
- Payment represents part or all of the wages the worker would have received if they were still performing services for employer

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Military Pay Differential

Heroes Earning Assistance & Relief Act of 2008

- Effective for all payments after 12/31/08
- Military Pay Differential is now wages

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Fringe  
Benefits

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### Taxable Fringe Benefits

- INCLUDE in Employee's wages and on W-2 (Never on 1099-MISC)
- Subject to Federal Withholding, Social Security and Medicare
- Even if benefit is received by/for spouse or child of employee

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### Exclusions

Taxable unless excluded by law

- Medical Premiums IRC 106
- Cafeteria Plans IRC 125
- Education Assistance IRC 127
- Dependent Care IRC 129
- Certain Fringe Benefits IRC 132

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### De Minimis Benefit

- Property or service, the value of which (after taking into account frequency) is so small that accounting for it would be unreasonable
- Must be small and infrequent
- Frequency defined - an event which is not haphazard but regularly reoccurring

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### Accountable Plan

- Business Connection
- Adequate 'accounting' by employee in reasonable time period
- Excess reimbursement returned in a reasonable time period
- IRC 62(c) & Treasury Regulations 1.62-2

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### Reimbursements & Allowances of "Business" Expenses

- It will not usually be taxable if accounted for under an Accountable Plan.

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### Non-accountable Plan

- Does not meet all 3 requirements for an accountable plan
- Benefit is fully taxable when paid

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## Awards

- Taxable:
  - Cash prizes including gift certificates
  - Performance awards
  - Non-Cash prizes use Fair Market Value
  - IRC 74
- Nontaxable: if rules are followed
  - Employee Achievement awards
  - Length of service awards
  - Treasury Regulations 1.274-8

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## Health Insurance Premiums paid by employee

- Excluded from Income If:
- Employer reimburses employee for paying health insurance premiums
  - Must require proof of prior payment
  - Can't receive cash in lieu of premium reimbursements
  - Revenue Ruling 61-146 and 75-241
  - Private Letter Ruling 9022060

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## Educational Assistance

- Separate written plan
- Exclude up to \$5,250 per year
- Nondiscriminatory
- Includes graduate level courses
- Tuition, books, fees, equipment & supplies
  - Unless employee can keep tools or supplies (excludes books) when course ends
- IRC 127

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Meal Money while  
Traveling on business:

- Meals away from home that are paid for, reimbursed or given an allowance:
  - Overnight
    - Accountable Plan - Not taxable
  - Not Overnight
    - Taxable as wages
    - Revenue Ruling 75-432 & 75-170
    - IRC 162(a)(2)

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Meal Allowance when  
Not traveling

- Meals with business meetings -
  - NOT taxable if:
    - clear business setting
    - directly related
- Employer buys you lunch -
  - Taxable as wages

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Cell phones



- Listed property §280F(d)(4)
  - Susceptible to personal use
- Substantiation rules §274(d)
- Allocate cost between business and personal use
- Personal use is taxable fringe benefit

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## Cell phones

- Need itemized bills
- Need written policy
- Employee can reimburse or include in wages
- Taxable even if usage is not over monthly amount paid by employer

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## Cell Phone Examples

- Plan is 500 min. & used 400 min. (100 personal) the personal use is still taxable
- If using minutes during nights/weekends this is still personal use and is taxable
- If allowance is given for using personal cell & no accountable plan then taxable

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## Automobile Expenses

- Employee car used for employer's business
  - 2009 - .55      2010 - .50
    - At this rate or less: Non-taxable to employee
    - Excess over rate: Taxable to employee

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### Substantiation Required

- Employee reports to Employer:
  - Date, Purpose, Place of each trip
  - Mileage
  - Examples: Diary, log, trip sheet, expense statement or similar record
  - IRC 274(d) – IRC 280F(d)(4)

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### Employer-Provided Vehicles

- Personal Use is taxable
  - Includes commuting
- Business Use is not taxable
- Employee can reimburse Employer for personal use or have included in wages
- No record kept then all taxable

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### Automobile Valuation Rules

- Cents-Per-Mile Rule
  - Treasury Regulations 1.61-21(d)
- Commuting Rule
  - Treasury Regulations 1.61-21(e)
- Automobile Lease Valuation Rule
  - Treasury Regulations 1.61-21(f)

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## Uniforms

- Cost and upkeep of clothes are excluded from employee's income if:
  1. Condition of employment
  2. Not suitable for everyday wear **and**
  3. Not worn while away from work
- IRC 162 & 262
- Donnelly v. Commissioner 262 F.2d 411
- Yeomans v. Commissioner 30 T.C. 757

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## Uniforms

- If suitable to replace regular clothing then include in wages
  - Mella v. Commissioner T.C. Memo 1968-594
  - Pevsner v. Commissioner 628 F.2d 467
- Allowances - Must meet accountable plan rules
  - Treasury regulations 1.62-2(c)(1)

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Compliance Check

vs.

Audit

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The IRS is calling.....

- Is it a Compliance Check or an Audit?
- Publication 3114 describes the difference.

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Compliance Check

- A tool to educate on reporting requirements
- Helps with voluntary compliance
- Review of Information returns
- Your chance to ask questions and voluntarily file missing forms.
- Can be turned into an audit
- No Section 530 Protection

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Audit

- Detailed Inspection of Books and Records
- No up front fee
- Can start as a Compliance Check

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# Mandatory Medicare

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### Medicare Wages

- **Mandatory Medicare Coverage:**
  - employees hired or rehired after 3/31/86
  - Coverage is mandatory, not voluntary
  - Even if paying into a retirement system
- **Medicare Exception:**
  - Hired prior to 4/1/86 and no break in service

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### Medicare Example

- Employee was hired in 1980 & therefore does not pay into Medicare. They retire on 6/30/06. They are rehired on 7/1/06. They never stop working. They **MUST** pay into Medicare starting on 7/1/06 because they are a new employee hired after 3/31/86.

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# Form W-9 & Form 1099

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## Form W-9

- To obtain a correct Taxpayer Identification Number (TIN)
- Anyone required to file an information return with IRS must use the form
- Substitute form is acceptable
- Applies to any US person including resident aliens

IRC 6041A(f) requires vendor to furnish information

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## No W-9 Information

- No TIN provided — Payments subject to Backup Withholding
  - IRC §3406(a)
- Backup Withhold rate is 28% for 2010
- Publication 1281 and Form 1099 instructions



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## Reporting Backup Withholding

- Report withholding to payee and to IRS in Box 4 of Form 1099-MISC
- Form 945 to pay the IRS
  - annual return, due 1/31/xx
  - ordinary deposit rules apply
  - make Form 945 deposits separate from Form 941 deposits

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## Form 1099-MISC

- Payments of \$600 or more for the year for:
  - Rents
  - Services or a combination of services and products (including parts and materials)
  - Prizes/Awards
  - Other Income
  - Medical and Health Care Payments
- IRC 6041

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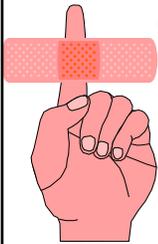
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## Medical & Healthcare Payments



- \$600 or more in Box 6
- Report payments to all individuals, partnerships, and corporations
- Medical payments include doctor fees, drug testing, lab fees, physical therapy, etc.
- Treasury Regulations §1.6041-3
- *\* Do not report payments to pharmacies or tax exempt hospitals*

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## Payments to Attorneys

- Attorney's Fees
  - Reported in Box 7
  - Payments of \$600 or more
- Gross Proceeds paid to Attorneys
  - Report in Box 14
  - Any Amount Paid
  - Don't report in Box 14 if reported in box 7
- IRC 6045(f)

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## LLC's & Reportable payments

- LLC can be taxed as sole proprietorship, partnership, or corporation
- Obtain a W-9 to determine status
- Report payments to sole proprietors and partnerships (sometimes corp.)

One or more owners

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## Common Errors

- Failure to obtain identifying information before making payment (use Form W-9)
- Failure to aggregate payments from all expense categories (use vendor files)
- Assuming payee is a corporation:
  - because name is "Company or Associates"
  - because an EIN is furnished

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## Independent Contractor or Employee

- **Behavioral Control** - how, when and where to do the work; training
- **Financial Control** - significant investment, expenses, opportunity for profit or loss
- **Relationship of the Parties** - employee benefits, written contracts

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## Resources

- Publication 1779 - determination on status of worker as either an independent contractor or an employee
- Publication 963 Chapter 3
- Revenue Ruling 87-41 – 20 factors
- IRC 3401

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## Trudee Billo (419) 522-2359

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|-------------|--------------|------------|
| ■ Adams     | ■ Greene     | ■ Pickaway |
| ■ Brown     | ■ Hamilton   | ■ Pike     |
| ■ Butler    | ■ Highland   | ■ Preble   |
| ■ Champaign | ■ Jackson    | ■ Richland |
| ■ Clark     | ■ Logan      | ■ Ross     |
| ■ Clermont  | ■ Madison    | ■ Scioto   |
| ■ Clinton   | ■ Marion     | ■ Shelby   |
| ■ Delaware  | ■ Miami      | ■ Union    |
| ■ Fayette   | ■ Montgomery | ■ Vinton   |
|             | ■ Morrow     | ■ Warren   |

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Wendy Speelman (419) 526-2607

- Allen
- Ashtabula
- Auglaize
- Crawford
- Cuyahoga
- Darke
- Defiance
- Erie
- Fulton
- Geauga
- Hancock
- Hardin
- Henry
- Huron
- Lake
- Lorain
- Lucas
- Medina
- Mercer
- Ottawa
- Paulding
- Putnam
- Sandusky
- Seneca
- Trumbull
- Van Wert
- Williams
- Wood
- Wyandot

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John Darr (419) 526-2886

- Ashland
- Athens
- Belmont
- Carroll
- Columbiana
- Coshocton
- Fairfield
- Franklin
- Gallia
- Guemsey
- Harrison
- Hocking
- Holmes
- Jefferson
- Knox
- Lawrence
- Licking
- Mahoning
- Meigs
- Monroe
- Morgan
- Muskingum
- Noble
- Perry
- Portage
- Stark
- Summit
- Tuscarawas
- Washington
- Wayne

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- Questions

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