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LGOC
Fringe Benefits
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Federal, State, Local
Government Entities



IRS Fringe Benefits

- Any benefit an employee receives in addition to their normal wage
- Could be monetary, equipment or services
- Taxable unless excluded specifically by law
- Treasury Regulations 1.61-21(a)(3)

IRS What To Do?

- Identify specific benefit provided to employee (s)
- Determine if benefit is excluded by law and
- Determine if benefit is fully taxable, or partially taxable

 **IRS Taxable Fringe Benefits**

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

 **IRS Exclusions**

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

 **IRS Non-Taxable Fringe Benefits**

- No additional cost service
- Qualified employee discounts
- Working condition fringe
- De minimis fringe
- Qualified transportation expenses
- Qualified Moving Expense Reimbursements

 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
- TAM 9148001

 Cash Allowances

- Also known as “Stipends”
- Do Not qualify as:
 - “working condition” fringe benefit or
 - “de minimis” fringe benefit
- Taxable to the Employee
 - Unless paid under the accountable plan rules

 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

 Non-Accountable Plans

- Any Arrangement that doesn't satisfy 1 or more requirements of an Accountable Plan
- All Amounts paid are then Wages
- Payments are subject to Federal Income Tax Withholding and FICA (if applicable)
- Reg. 1.62-2(c)(3)

 Gift Certificates

- TAM 200437031
- Employer provided holiday gift coupon redeemable at local stores
 - Intended to be used for ham or turkey
 - Had restrictions on it (i.e. tobacco)
 - Limited dates to redeem it
- Determined to be taxable

 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
 - Safety award
 - Treasury Regulations 1.274-8

 **Bonuses**

- Taxable to the employee & included in their wages/W-2
- Never on Form 1099
- Includes: All cash & check bonuses, Christmas bonuses & gift certificates
- IRC 61
- Treasury Regulation 1.61-2 & 1.132-6(c)

 **Day Meals**

- If the employer reimburses or pays for meals on a **day trip** then:
 - Include the cost of meal reimbursed to the employee in their payroll as a fringe benefit
 - Subject to Federal Income Tax, Medicare and SS if have SS wages
 - Revenue Ruling 75-432 & 75-170

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 **Day Meals continued**

- If union contract says to pay for meals then reimburse but include in wages
- If have policy to pay for meals if traveling out of county it is still taxable and included in wages
 - Must include in payroll the amount of lunch as a noncash item

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Meals at Conferences

- “Associated With” Meals - Tax-Free not included in wages if
 - Meals at conventions
 - Meals at conferences
 - Does not include going to lunch with co-worker (this would be personal & taxable = include in wages)

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Automobile Expenses

- Employee car used for employer’s business
- 2017 - .535 cents per mile (.54 cents in 16)
 - At this rate or less: Non-taxable
 - Excess over rate: Taxable fringe benefit included in wages
- Monthly allowance for driving own car is taxable if no accountability (verifying mileage)

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Employer Provides Vehicle

- Personal Use
 - Commuting, spouse or weekend use
- Substantiation Requirements
 - Business & Personal mileage
 - Documentation = personal use is taxable
 - No documentation = all mileage is taxable
 - Exception for some positions/vehicles

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 Valuation of Personal Use

- Include in wages as a fringe benefit
- 3 Automobile Valuation Rules for providing a vehicle to employee
 - Auto Lease Valuation Rule
 - Applies to all auto - doesn't have to be leased
 - Vehicle Cents-Per-Mile Rule
 - Commuting Rule

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 Lease Valuation Rule

1. Determine FMV of vehicle
2. Use table in Publication 15-B
3. Determine % of personal use
4. Multiple Annual Lease Value by % of personal use
5. If fuel is provided then add 5.5 cents per mile

 Cents-Per-Mile Rule

- Vehicle "regularly used" in business OR
- Vehicle driven 10,000 miles a year and FMV in 2017 limited to \$15,900
- Regularly used means
 - 50% or more of mileage is for business or
 - Vehicle is used to transport at least 3 employees to work
- .535 cents in 2017 (.54 in 2016)

 **Commuting in Employer's car**

- From home to office or office to home
- Is it commuting if you:
 - Get called out from your home at 6AM for a water main break & when done go to office
- Employee can't say they stop somewhere everyday to avoid being taxed

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 **Commuting Rule**

- \$1.50 per one-way commute if:
- Vehicle owned/leased by employer
- Employer requires the employee to commute for bona fide noncompensatory business reasons
- Written policy on personal use
- No control employees (elected officials)

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 **Commuting Method Example**

How much would be included in the employee's wages for the benefit received?

- Supervisor takes car home every day
- Goes to work at 7 AM & goes home for lunch
- Comes back to office & goes home at 4 PM
- Comes back in for a mandatory meeting at 7 PM & returns home at 9 PM

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 **Commuting Method**

- Don't assume \$3 every day worked
- Include commuting on weekends, evening and lunch
- If someone is salary do you know if they came in on weekends or evenings?
- Could have business trip on way in or home and then wouldn't be commuting

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 **Qualified Non-personal Use Vehicles (QNPV)**

- Use of a QNPV is excludable to employee as a working condition fringe benefit
- Commuting is nontaxable to the employee
- Must have policy on restricting personal use of the vehicle
- Substantiation and record keeping is not required

 **Examples of qualified Non-personal use Vehicles**

Clearly marked police and fire vehicles
Unmarked vehicles used by law enforcement officers

The officer must be:

1. Authorized & regularly carries a firearms
2. Execute search warrants
3. Make arrests (not citizen's arrest)

 **Examples of Vehicles**

- Ambulance
- Dump truck
- Flatbed trucks
- Utility repair truck (not a pickup truck)
- Passenger buses (at least 20 passenger)
- Delivery trucks with driver seat only or driver & folding jump seat
- Vehicle designed to carry cargo - loaded gross vehicle weight over 14,000 lbs

 **Uniform Requirements**

For uniforms to be nontaxable and not be included in the employee's wages they must:

- Be required by employer to be worn
 - Must be in written policy
 - Can't be optional if they wear them
- Not be adaptable to every day street wear

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 **Accountable Plan**

- Allowances paid through non- accountable plan are Taxable
 - If give employee \$200 for uniform and they don't provide substation (receipts) then must include in W-2
 - Business Connection
 - Return excess in reasonable time

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 **How Clothing is Purchased**

- Uniform rules applies to:
 - If the employer purchases the clothing
 - If the employee purchases and the employer reimburses the employee
 - If purchased thru a rental company

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 **Law & Court Cases**

- If clothing suitable for taking the place of regular clothing, include in W-2
 - IRC 162 & 262
 - Mella v. Commissioner T.C. Memo 1968-594
- Not enough that the employee does not wear the clothing away from work
 - Pevsner v. Commissioner 628 F.2d 467

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 **Employer Provided Cell Phones**

- If provided for noncompensatory business reason then excluded from income:
- Business use as working condition fringe benefit
 - Personal use as de minimis fringe benefit
 - Effective after 12/31/09

 - Notice 2011-72 & Publication 15-B

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 **IRS Non-compensatory business reason**

- Must be substantial business reasons for providing the cell phone
- Example of substantial business reasons:
 - Need to contact employee at all times
 - Require employee be available to speak to clients when away from office
 - Need to speak to clients in other time zones, not in employee's normal workday

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 **IRS Cell Phones Reimbursements**

- Employee uses personal cell phone for business
- Employer reimburses at a set amount for business use
- Don't included in employee's wages if:
 - Reimbursement reasonably calculated
 - Not in excess of actual expense incurred
 - Review phone bill

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