Social Security *News*

Employer news from the Alaska Division of Retirement and Benefits

| Summer 2008 | Issue #4

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Rules Governing Deferred Pay for Public School Employees

Public school teachers (and, in some cases, other school system employees) usually work for only nine or 10 months out of a year but often elect to be paid over a 12-month period. This means that the teacher is deferring a portion of his/her pay earned in one calendar year to the next calendar year. This is referred to by the Internal Revenue Service (IRS) as "recurring part-year compensation."

The Treasury Department and the IRS anticipate a new regulation will be proposed under § 457(f) of the Internal Revenue Code (IRC) that is expected to address certain types of recurring part-year

- Because the amount the employee earns during 2008 that is paid in 2009 ($93,000 - $77,500, or $15,500) does not exceed the applicable dollar amount under § 402(g)(1)(B) for 2008 ($15,500), the arrangement would not provide for deferred compensation for purposes of § 457(f).

Internal Revenue Code (IRC) Section 409(A) sets forth certain requirements that must be met in order for amounts deferred under a nonqualified deferred

compensation arrangements, including common arrangements.

Under a common arrangement, a school system allows some of the compensation earned for working during one calendar year to be paid in the next calendar year at or after the end of the school year.

Under the new anticipated rule, none of the compensation paid to a teacher would be deferred compensation if the amount the teacher earns during the first calendar year that is paid in the second calendar year does not exceed . . . the dollar amount applicable for the first calendar year ($15,500 for 2008).

For example, assume a school district employee works during a school year that begins on August 1, 2008, and ends on May 31, 2009, (a 10-month school year). The employee is paid over the 12-month period beginning August 1, 2008. This arrangement would not provide for deferred compensation for purposes of § 457(f) unless the employee earns more than $186,000 for the school year.

In this example:

- Five months of the school year are in 2008 and five months are in 2009.
- If the employee's salary for the school year is $186,000, the employee earns $93,000 in 2008 and $93,000 in 2009.
- Under the 12-month payment schedule, the employee receives $77,500 in 2008 and $108,500 in 2009.

compensation plan (dcp) to not be included in gross taxable income in the year that the amount was earned.

The final regulations under IRC 409(A) governing a nonqualified dcp were published in the Federal Register on April 17, 2007, and **apply to taxable years beginning on or after January 1, 2009**. The regulations:

- define a nonqualified dcp subject to 409(A)
- set forth the requirements to comply with the rules governing deferral elections and payment timing under 409(A)

The Treasury Department and the IRS anticipate that these rules should exclude from coverage under §§ 457(f) and 409A most arrangements for public school teachers and other school-year employees under which they are permitted to annualize school year compensation (whether or not they are given individual elections).

As additional information is released we will include it in future news articles. We encourage you to go to the IRS.gov website to track this potential regulation.

If you have questions or would like further information and guidance on the regulations governing recurring part-year compensation arrangements, please contact Kay Gouyton or Carol Ochsner in the Division's Audit Section.

Federal Withholding & Reporting on Election Workers & Election Officials

Election workers and election officials are

individuals hired by government entities to work at polling places in connection with national, state, and local elections. Election workers and officials are employees of the employer hiring them. They are not independent contractors.

The State of Alaska and some political subdivisions employ many election workers and election officials. If a political subdivision hires its own election workers and officials, it needs to be aware there is a difference between workers who work at "polling places" and all other workers (such as general coordinators or additional office staff).

Voting officials and workers at voting stations are examples of election officials and election workers ("poll workers") and fall under special federal reporting provisions. All nonpoll workers working in an election are treated as temporary employees.

The following information speaks specifically to the employment of "poll workers":

Income tax withholding information on election workers and election officials can be found under Section 3401(a) of the Internal Revenue Code (IRC). In most cases the wages are not taxable.

There are three unique reporting

If the employer **is** a Social Security Section 218 employer:

- Most Section 218 agreements specify when FICA payments for election workers or election officials must be withheld.
    - Some Section 218 Agreements require withholding after the employee has been paid remuneration of $50, $100, or greater (up to the yearly maximum) within a calendar year.
    - If the employer's Section 218 Agreement does not have an election worker or official exclusion, FICA taxes apply from the first dollar paid, and Social Security and Medicare must be withheld on all of the worker's remuneration.
    - Example: $1,400 or more in earnings, Social Security and Medicare or an alternate pension plan (i.e., SBS) must be withheld on the full amount.

Reporting Requirements:

- If you are a Section 218 employer, you need to withhold and report according to the terms of your agreement.
- A Federal Form W-2 must be filed for election workers or election officials who receive payments of $600 or more, even if no FICA and income tax was withheld.
- A Federal Form W-2 must be filed for election workers or election officials who receive payments less than $600 that are subject to FICA taxes under a Section 218 Agreement.
- It is the employer's option to use a separate Federal Form W-2 to report employee compensation derived from separate components. Example: A regular employee who also receives wages as an election worker or official.

For additional guidance on treatment of election workers or election officials, refer to the instructions for Forms W-2 and W-3, IRS Publication 963,

requirements for polling place wages. They are:

- Treatment of earnings below $600
- Treatment of earnings from $600 through $1,399.99
- Treatment of earnings of $1,400 and over

These three classification wage groups are further complicated depending on whether or not the employer is a Social Security Section 218 employer.

The IRC provides specific rules governing the withholding of Social Security and Medicare taxes for election workers and officials.

If the employer **is not** a Social Security Section 218 employer:

- For calendar year 2008, Social Security and Medicare must be withheld on a worker whose remuneration is $1,400 or greater during the year.
    - Example: Under $1,400 in earnings, no Social Security or Medicare withheld.

Publication 15 (Circular E) and revenue Ruling 2000-6.

For information on the contents of your Section 218 Agreement contact Kay Gouyton or Carol Ochsner.

New Income Tax Exclusion for Volunteer Firefighters & Emergency Responders

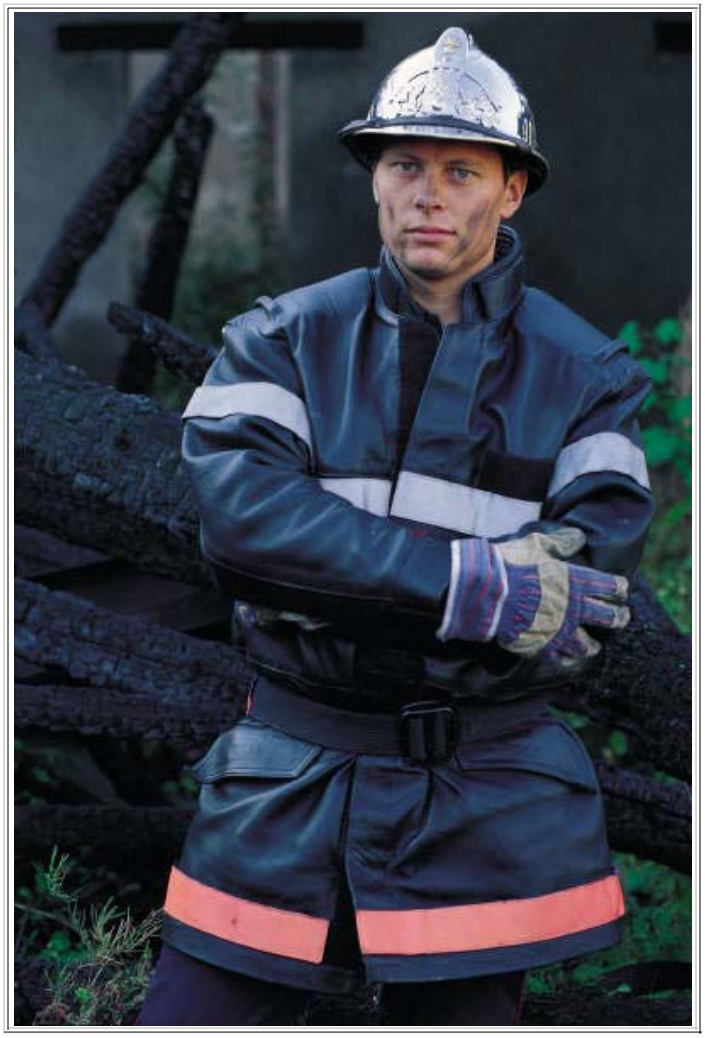
BY STEWART ROULEAU, FSLG SENIOR ANALYST

From IRS.gov, Tax information for Federal, State, Local Goverments, FSLG Newsletter, July 2008 (http://www.irs.gov/pub/irs-tege/p4090_0708.pdf)

The Mortgage Forgiveness Debt Relief Act of 2007 contained an important provision affecting firefighters and other emergency responders who receive local tax benefits or other benefits for volunteer services. This provision was further clarified by the Heroes Earnings Assistance and Relief Tax Act of 2008.

What are the New Benefits?

The new law provides that volunteer firefighters and emergency responders may exclude certain benefits from income provided on account of the performance of volunteer services.



Property Taxes

A common practice in many jurisdictions is to provide volunteers with reductions or abatements of state or local property taxes in recognition of work performed. Because this represents a benefit received in exchange for services performed, under prior law this represents compensation and gross income for Federal tax purposes under Internal Revenue Code section 61. Beginning January 1, 2008, volunteers who perform services for a qualified volunteer emergency response organization may exclude the value of property tax abatements from Federal gross income. These amounts are also excluded from Social Security and Medicare (FICA) tax.

Other Benefits

In general, reimbursements for expenses are included in the income of the volunteer unless they are made under the provisions of an accountable plan. An accountable plan requires that an employee timely account for all reimbursements and return any excess amounts. See Publication 15, Employer's Tax Guide.

The new law provides that the value of other benefits that qualifying volunteers receive (such as reimbursements for expenses or equipment allowances), up to $30 for each month of service during a calendar year, may be excluded from income for income tax, Social Security and Medicare purposes. The new law does not require that these payments be made under an accountable plan. If the volunteer performs services in each month of the year, the maximum exclusion for these benefits is 12 x $30, or $360 per year.

Who Is Eligible?

Individuals who perform services for qualified volunteer emergency response organizations are eligible for these benefits. A "qualified volunteer emergency response organization" for this purpose is an entity that is organized and operated to provide firefighting or emergency medical services for persons in the state or political subdivision. The $30 per month exclusion applies to amounts not otherwise excludable as reimbursements received under an accountable plan. For more information on accountable plans, see section 5 of Publication 15.

No Double Benefit

Property taxes are generally deductible as itemized deductions, but any amounts excluded under these provisions may not be included on Schedule A as deductible taxes.

When Can the Exclusion Be Taken?

The exclusion is available for tax years 2008, 2009, and 2010.

Further Information

The IRS expects to issue further guidance on the implementation of this law in the near future. Visit www.irs.gov/govt for updated information.

Scammers Use E-Mail, Fax to Pose as IRS

The Internal Revenue Service cautions taxpayers to be on the lookout for a new wave of scams using the IRS name in identity theft e-mails, or phishing, that have circulated during the last two months.

In May and June alone, taxpayers reported almost 700 separate phishing incidents to the IRS. In 2008 so far, taxpayers have reported about 1,600 phishing incidents to the IRS.

"Taxpayers should take steps to keep their personal information out of the hands of identity thieves," said IRS Commissioner Doug Shulman. "That includes not falling for any of the phony e-mails or faxes now in circulation pretending to come from the IRS."

The most common scams involve tax refunds and, this year, economic stimulus payments.

Although most of these scams consist of e-mails requesting detailed personal information, the IRS generally does not send e-mails to taxpayers, does not discuss tax account matters with taxpayers in e-mails, and does not request security-related personal information, such as PIN numbers, from taxpayers.

New IRS *"Government Entity Toolkit"* Program Assists Employers

The IRS has a new Government Entity Toolkit program to assist employers. The Toolkit is designed to provide a concise guide to the basic requirements for compliance with Federal tax laws in major areas of interest to governmental organizations. The **Toolkit** consists of three parts:

(1) A **Public Employer's Toolkit**, which provides information to government entities and payroll officers working for government entities in meeting their federal employment tax obligations

(2) A **Compliance Toolkit**, which provides information to help government entities and their powers of attorney understand the enforcement process; and

(3) An **International Withholding Issues Toolkit**, addressing requirements and procedures for withholding tax from nonresident aliens.

Dear Employers:

We hope you find this newsletter helpful. If you have any questions or suggestions please feel free to contact us. Any feedback from you will be greatly appreciated. The following people are your contacts in the Audit Section:

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For a printer friendly copy of this issue, please click here; for all past issues, click here. Email your comments to Kay Gouyton, Carol Ochsner, or the editor, Barbara Kelly.

The Audit Section operates under the guidance of IRS Publication 963 and the *State & Local Coverage Social Security Handbook*, SSA Publication No. 16-055.

Please refer to IRS.gov and SSA.gov for further information.

Social Security *News* is published quarterly by the
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