

## TAXABLE FRINGE BENEFITS

Please utilize this information when preparing the listing of taxable fringe benefits to be included on employee W-2s. Please make special note of the information about UNIFORMS and MEALS.

NOTE: This pertains ONLY to the IRS interpretation of taxable items, which in no way pertains to the State Auditor's review of "proper public purpose." The IRS does not suggest that the expenditures listed below should not be paid, only that the payments may result in taxable income to the employee receiving the benefit.

- ❖ Cash awards and gift certificates given to employees (no "de minimis" applies)

Only safety awards and length of service awards are NOT taxable, and these awards must be in the form of personal property (plaque, watch, etc). All cash, gift cards and gift certificates, and all awards for purposes other than safety and length of service, must be reported and taxed as income to the employee.

- ❖ Personal use of employer-provided vehicles

Mileage logs should be maintained, substantiating the use of county-owned vehicles. There should also be written justification as to why an employee drives a County-owned vehicle home.

- ❖ Personal use of employer-provided cell phones and other wireless devices

The agency should have a cell phone policy in place. Invoices should be annotated or logs should be maintained showing personal and business usage. If there is no documentation of review for personal usage, ALL calls should be considered PERSONAL and reported as a taxable fringe benefit to the employee.

- ❖ Clothing

To be non-taxable, four conditions must be met: (1) the employee MUST wear it as a condition of employment, (2) the employee MUST BE PROHIBITED from wearing it off-duty, (3) the clothing MUST HAVE a readily distinguishable logo AND (4) the clothing MUST NOT be suitable for taking the place of regular clothing.

Any clothing that is suitable for taking the place of regular clothing is to be included on the employee's W-2. It is not enough that the employee is prohibited by policy from wearing the clothing outside work. Polo shirts with County logos, scrubs, Carhart jackets, cargo pants, Dockers and blue jeans are considered to be suitable for everyday use and must be included on the W-2. For an example, Carhart outerwear worn by maintenance crews can be worn as street-wear, so it is not considered to be a UNIFORM. If a similar item of clothing can be purchased from a retail store like Wal-Mart, then the clothing is considered to be suitable for everyday use. THERE IS NO DE MINIMIS AMOUNT. Even if the clothing is required to be turned back in at the end of the employee's employment, it is still to be included on the W-2 as a benefit. Additionally, the next employee who wears the clothing also has it included on the W-2, but at the "fair market value" for that used article of clothing (similar to the price that would be charged at a thrift store).

Examples of UNIFORMS that can be excluded from the W-2: law enforcement officers, firefighters, letter carriers, professional athletes, delivery workers, health care workers, transportation workers (air, rail, bus, etc.).

Protective or safety clothing (steel-toed boots, work gloves, hard hats, safety glasses) required by an employer, although it may have some personal use, can be excluded from reporting on the W-2.

❖ Meals (except for overnight business-related travel)

Meals while in TRAVEL STATUS can only be excluded if they fall under the OVERNIGHT RULE (45 or more miles from home). If there is no overnight stay related to the travel, the meals are taxable to the employee and should be on the W-2.

Meals for the convenience of the employer can be excluded if the employees are not allowed to leave the premises and the food is provided to substantially all the employees.

Meals provided to BUILD "GOODWILL", to "IMPROVE GENERAL MORALE", or "TO ATTRACT PROSPECTIVE EMPLOYEES" do not qualify as business meetings and are taxable fringe benefits. For other meals to be excluded from W-2 reporting, there must be documentation as to who attended, the purpose of meeting, the date and the place. The expense is considered to be directly related to business if (1) the main purpose of the combined business and meal is the active conduct of business, (2) business is actually conducted during the meal period and (3) there is the expectation of deriving income or other specific business benefit at some future time. Because government doesn't derive income or generate profit, the IRS agents have been concluding that test #3 cannot be met.

Meals at a conference, or at a trade or professional association meeting when the attendee represents the employer are not taxable.

Meals at an annual employee recognition event are not taxable.

"De Minimus" can apply if the employee attended NO MORE THAN TWO events where food was provided; otherwise, it ALL is considered taxable.

- ❖ Life insurance premiums paid as a bonus, life insurance premiums paid under a "split-dollar" arrangement and payments made to an employee's IRA
- ❖ Tuition payments, if the payments exceed \$5,250 and the studies do not fit the "job-related" criteria  
**NOTE:** Employer-provided educational assistance **is not taxable** if the expenses maintain or improve skills required by the individual in his employment.

As a reminder:

- ❖ Settlements for back-pay **are taxable AND should be paid through payroll** so taxes can be properly withheld. Notify the Auditor's Payroll Department as soon as possible after negotiating such a settlement. There are OPERS ramifications.
- ❖ In most instances, an employee cannot be paid both through the County payroll and the County accounts payable systems for substantially similar services, even if the payments are made by two separate County agencies. The IRS considers Franklin County to be one common paymaster; therefore, individuals cannot be both employees and independent contractors. All payments should be made **through payroll** so taxes can be properly withheld.