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## **Section 4065—Resident and Nonresident Aliens**

### **4065.10—Withholding Federal Income Tax**

Wages paid to resident and nonresident aliens for services rendered in the United States as employees generally are subject to the same Federal income tax withholding rules, procedures and rates applicable to employees who are U.S. citizens. Taxation varies and could be subject to treaty provisions.

### **4065.20—Withholding Exemptions**

Resident aliens may claim the full number of withholding exemptions they would be entitled to under the rules applicable to U.S. citizens. Nonresident aliens who are residents of Canada, Mexico, Japan or South Korea may do the same. All other nonresident aliens may claim only one withholding exemption.

### **4065.30—Social Security and Medicare Taxes**

Nonresident aliens in the United States on “F-1,” “J-1” or “M-1” visas do not pay Social Security and Medicare taxes on money earned while performing services for which such visas were granted. This income is not subject to Social Security and Medicare taxes even if it is for services not covered by the U.S. Government retirement system.

Other nonresident and resident aliens must pay Social Security and Medicare taxes if they perform services in and for the United States and those services are not covered by a U.S. retirement system. Resident aliens pay Social Security and Medicare taxes, whether they perform services outside or within the United States. Nonresident aliens do not pay Social Security and

Medicare taxes for services performed outside the United States. Agencies should report withholding on payments to nonresident aliens on Form 1042: Annual Withholding Tax Return of U.S. Source Income of Foreign Persons. They should deposit the taxes according to the same rules as Form 941.

### **4065.40—Payment of Taxes and Tax Returns**

Agencies should treat withheld Federal income, Social Security and Medicare taxes on wages paid to resident and nonresident aliens in the same way as these taxes are treated for U.S. citizens. See sections 4045, 4050, 4055 and 4060. Include these taxes with other withheld Federal income, Social Security and Medicare taxes as part of the total tax payment transmitted through FEDTAX II or EFTPS. Also, include them on Form 941.

### **4065.50—Overseas Taxpayer Service Locations**

See Appendix 4 for a directory of IRS representatives in foreign countries.

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## **Section 4070—Deceased Employees**

If the employee’s wages are paid to his or her beneficiary or estate in the same calendar year the employee died, the covered employee’s unpaid salary, wages and unused annual leave are subject to Social Security and Medicare taxes. The deceased employee’s employer deducts and withholds Social Security and Medicare taxes from the unpaid current compensation and the payment for unused annual leave.

Treat the amount withheld and the employer’s contributions as prescribed in sections 4045, 4050, 4055 and 4060. Wages paid to an employee’s beneficiary or estate after the calendar year in which the employee died are not

subject to FICA taxes. [See IRC section 3121(a)(14); Rev. Rul. 86-109, 1986-2 C.B. 196.]

According to Rev. Rul. 86-109, report the accrued wages and vacation pay of a deceased employee paid to an estate, or other person who has acquired the right to receive the payments, on Form 1099-MISC.

These payments are not considered wages for purposes of collecting income taxes at the source. Therefore, they do not appear on Form W-2, Box 1, “Wages, tips, other compensation.” These payments are considered wages for purposes of FICA taxes only if paid to the beneficiary or estate before the close of the calendar year in which the employee died. If they are paid before that date, the payment amount appears as Social Security wages (up to the amount of the wage base) and Medicare wages on Form W-2. However, it does not appear in Box 1 as wages.

Report the entire amount of death benefits on Form 1099-R: Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. Those benefits may be from a qualified plan paid to an estate or other person who has acquired the right to receive the payments solely because of the employee’s death. Also, report death benefit payments from a nonqualified plan on Form 1099-R.

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## **Section 4075—Levy for Unpaid Tax Liability**

IRC provisions permit district directors to collect delinquent Federal taxes by levy on the accrued salary or wages of any officer, employee or elected official of the United States or the District of Columbia. Since this levy is served against the take-home pay of the employee, once the levy is served, agencies should not permit an employee to increase any voluntary allotment until the tax liability is liquidated or other

arrangements satisfactory to the IRS are made.

#### **4075.10—Service of Levy**

An IRS employee (agent) serves notice of levy on wages, salary and other income of individuals designated under section 4075.20. The IRS can serve this notice in person or by mail. Service by mail is limited to the United States, its territories and possessions, and ships at sea. A notice of levy includes an original and four copies. All copies should be signed and dated, with the time of receipt noted on the forms. The agency should return the original to the IRS employee. The employing agency keeps one copy. IRS or the employing agency sends another copy to the employee.

The person designated in section 4075.20 must honor all applicable notices of levy, whether served in person or received by mail. The General Accounting Office makes no disallowance nor does it raise charges against any disbursing officer or designated person for complying with notices of levy.

#### **4075.20—Designating Individuals to Receive Service of Notice of Levy**

Each Government agency should designate one or more persons on whom notice of levy for delinquent taxes of its employees may be served. These designees receive written statements from such employees regarding exemptions for dependents as provided for in the IRC.

#### **4075.30—Minimum Exemption from Levy for Wages, Salary and Other Income**

A check to the employee each pay period includes exempt take-home pay and the amount by which the nonexempt take-home pay exceeds the levy amount. Refer to the IRC for specific exemptions

and related procedures, or contact the local IRS office.

#### **4075.40—Continuing Levy on Salary and Wages**

The levy on salary or wages continues from the date the levy is first made until the levy is released.

#### **4075.50—Liquidation through Payroll Deductions**

An employee may arrange with the IRS to liquidate a tax liability through payroll deduction. IRS Form 2159: Payroll Deduction Agreement, authorizes such payroll deductions. The employee and a revenue officer (or other authorized IRS agent) must sign Form 2159. Send the original to the payroll office. The employing agency deducts the amount agreed upon from the employee's salary until the total tax liability is liquidated.

#### **4075.60—Payment to IRS**

The agency sends one check each pay period to the IRS to cover amounts deducted from employees' pay. Attach a list to the payment containing the name of each employee involved, the amount, the employee's TIN and the taxable year. Send the payment to the address specified by the revenue officer or other authorized IRS agent.

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### **Section 4080—Reimbursement of Employees' Expenses**

In some cases, agency reimbursement of employee business expenses is excludable from employees' incomes and not subject to FICA taxes and withholding. This applies only if the employer has a reimbursement or other expense allowance arrangement that is an "accountable plan" within the meaning of the Income Tax Regulations, section 1.62-2. This plan must require that the employee substantiate to the

employer the amounts and business purposes of expenditures and return advances in excess of expenses.

#### **4080.10—Payments under an Accountable Plan**

If an employee:

- Must substantiate, and does substantiate, all business expenses, and
- Must return, and does return, amounts advanced for expenses that were not substantiated within a reasonable period;

then, the agency treats the reimbursements as paid under an accountable plan.

If an agency reimburses an employee a per diem or standard mileage rate for auto expenses, the employee must establish the time, place and business purpose of the expense. Then, if the reimbursed amount is the same as or less than the Government specified rates, do not include the amount in the employee's income.

The Federal per diem rates are published, by locality, at 41 Code of Federal Regulations (CFR), Chapter 301, Appendix A. Annually, IRS publishes a Revenue Procedure that provides rules under which business expenses will be deemed substantiated according to the CFR.

Do not report amounts paid under an accountable plan as income on Form W-2. These amounts are not subject to FICA taxes and withholding. Report such amounts on Form W-2, in Box 13, using code L.

#### **4080.20—Amounts Treated as Paid under a Nonaccountable Plan**

An agency should report an employee's business expenses as wages on Form W-2 if: