

TAXABLE ALLOWANCES

INCLUDING DISCUSSION OF:

**NON-TAXABLE ACCOUNTABLE
EXPENSE REIMBURSEMENTS**

VS

**TAXABLE ALLOWANCES, WAGES, LOST
TIME, REIMBURSED DUES, AND
PAYROLL TAXES**

TAXABLE ALLOWANCES

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ACCOUNTABLE VS NON-ACCOUNTABLE (NON-TAXABLE VS TAXABLE PAYMENTS)

The Internal Revenue Service recognizes that there are various types of expense reimbursements. IRS Code defines two broad categories of payments to individuals and employees - Accountable (non-taxable) and Non-Accountable (taxable).

The Glossary section included with AFSCME's Financial Standards Code provides a summary definition of these two types of "reimbursement plans". Both plans involve payments to individuals. The general difference between these two arrangements is as follows:

Reimbursed Expenses - Accountable Plan

- **Reimbursement for approved costs incurred on behalf of the affiliate.**
- **Expense report is required.**
- **Receipts are submitted to the affiliate.**
- **Specific Union purpose of each item is explained.**
- **Treated as non-taxable.**
- **Neither the individual nor the affiliate is required to report the payments or the expenses to the IRS.**

Expense Allowance Non-Accountable Plan

- **Compensation for costs expected to be incurred in performing union services.**
- **No expense report or other accounting for these funds is required.**
- **Treated as compensation.**
- **Includes: car allowances, officer allowances, stipends and any other payments to officers for which no accounting is required or expected.**

EXAMPLES OF TAXABLE AND NON-TAXABLE PAYMENTS

	<u>W-2</u> Taxable Income	<u>Non W-2</u> Reimbursed Expense
Affiliate President John Smith receives a monthly allowance/stipend of \$50.00.	√	
Affiliate Treasurer Jane Brown is paid mileage (300 miles at 58.5 cents per mile)		√
Steward Sarah Miles receives lost time payment for contract negotiations.	√	
Affiliate Secretary Shelly Jones receives a \$250.00 advance for convention lodging and meals. She provides \$248.00 in receipts and returns \$2.00 to the affiliate.		√
Affiliate Vice President Jim Jones receives \$250.00 to pay for convention expenses and does not provide receipts.	√	
Steward Jack Green has his union dues reimbursed by the affiliate.	√	
Affiliate President Jay Hall purchases supplies for the affiliate and submits the receipt and expense report for payment.		√
Affiliate Executive Board member Robin Williams receives a \$50.00 meeting allowance for attending an officer workshop.	√	
Steward Tim Johnson receives \$40.00 for contract negotiations.	√	
Affiliate Treasurer Sally Smith receives \$22.40 for long distance calls after submitting a copy of her phone bill with union calls marked.		√

REPORTING & DOCUMENTATION REQUIREMENTS

If a payment is treated as taxable income (payroll), the affiliate must:

- **Withhold payroll taxes.**
- **Pay employer's matching Social Security and Medicare taxes.**
- **Remit these payroll taxes on a timely basis to the IRS and state agencies as required**
- **File the appropriate monthly, quarterly or annual payroll tax reports with both the IRS and state.**
- **Inform the individual and IRS of the amount of payroll paid and taxes withheld by preparing IRS Form W-2 by January 31 following the tax year in question. IRS Form W-3 is used to transmit W-2 forms.**

If a payment is treated as a non-taxable reimbursed expense:

- **The affiliate is not required to report this payment to the IRS.**
- **The individual is not required to report this payment to the IRS.**
- **The individual must submit an expense report with detailed receipts and an explanation of union business purpose attached to the expense report to account for expenses paid by the affiliate.**

NOTE: Keep a copy of any forms filed with the IRS or State for the affiliate's records.

ACCOUNTABLE (NON-TAXABLE) REIMBURSEMENTS

REIMBURSED EXPENSES

A payment represents reimbursement to an officer or member if payment is for:

1. actual expenses incurred, AND
2. a list of expenses on an expense report is submitted to the affiliate union, AND
3. a detailed receipt and explanation of union business purpose is provided for each item to be reimbursed.

The officer or member should generally submit original paid receipts for all expenses incurred. By submitting paid receipts, the officer or member has accounted to the union for expenses. Under the “Accountable Plan” rules, neither the union nor the individual is required to provide an accounting or report of the payments to the Internal Revenue Service (IRS).

EXAMPLES OF REIMBURSED EXPENSES

An affiliate’s membership and/or Executive Board authorizes reimbursement:

1. for items purchased for the affiliate’s use such as office supplies or postage stamps.
2. for automobile mileage at 58.5 cents per mile (2022 approved Federal mileage rate). Union purpose of the trip must be documented on an expense report (travel to union meeting, grievance handling, etc.)
3. for documented pre-approved expenses incurred, such as for attending a convention.

ADVANCES FOR EXPENSES TO BE REIMBURSED

The union may provide an employee, officer or member with an advance of funds for expenses to be incurred. Advances should only be given for specific costs to be incurred, and only with the approval of the Executive Board. The person receiving the advance must submit a timely expense report with paid receipts for all expenses incurred against the advance.

If the pre-approved authorized expenses exceed the original advance amount, a check may be issued to the individual to reimburse the additional costs. If the expenses incurred are less than the advance amount, the difference must be immediately reimbursed by the individual to the union.

NON-TAXABLE PER DIEM PAYMENTS

Per Diem is an amount provided to an individual to cover general daily meals and incidental costs when traveling out-of-town. The Federal government provides a table of the maximum amount of per diem that can be paid in specific cities. A copy of this government table is provided in this section.

Any amount paid for out-of-town per diem is non-taxable provided:

1. the amount is equal to or less than the maximum federal rate, **AND**
2. an overnight stay was involved, **AND**
3. the trip was related to union business, **AND**
4. an expense report was filed documenting the business purpose of the trip, showing daily per diem paid, and other costs incurred. The dates for which per diem is paid must agree to approved travel dates.

Federal law allows payment of 75% of the out-of-town per diem rate for the first and last day of travel. An alternative way of calculating this amount would be to pay the full out-of-town per diem on the first day of travel, but only pay 50% of the out-of-town per diem rate on the last day of travel (the day of return).

Out-of-town per diem paid in excess of the allowable federal rate is taxable for the portion exceeding the rate indicated.

ACCOUNTABLE PLAN REPORTING REQUIREMENTS

The following are financial responsibilities of the affiliate and the individual concerning ACCOUNTABLE reimbursed expenses. Please note that all payments must be approved by the affiliate's membership and/or Executive Board.

Reimbursed Expense Responsibilities of the Affiliate

- 1. Proper supporting documentation (an expense report with original detailed receipts attached) and an explanation of union business purpose must be received before issuing a check. Expense reports and original receipts must be maintained in the affiliate's files.**
- 2. Reporting to the IRS or the individual is not required.**

Reimbursed Expense Responsibilities of the Individual

- 1. Submit proper supporting documentation and receipts.**
- 2. Reporting to the IRS is not required.**

NON-ACCOUNTABLE (TAXABLE) PAYMENTS

WAGES or SALARY

Compensation of employees represents the most common taxable payment made by the union. Any payment of income to an individual who is a full or part-time employee of the affiliate, is considered wages or salary, and is taxable.

Special IRS rules apply to officers that generally require all “non-accountable” payments to the individual to be considered wages, subject to all payroll tax reporting regulations. These payments are discussed in a 1992 letter with a 1991 IRS Private Letter Ruling included in this section.

LOST TIME PAYMENTS

Many employers permit union officers or representatives to spend some of their working hours on affiliate business. In some instances, the agreement with the employer provides for “union leave”, where the employer continues to pay wages and benefits for the member while they are performing union business.

By contrast, some employers allow the member time off, but it must be taken as either “leave without pay” or as vacation. In such instances, the union MAY authorize payments for wages actually lost. These payments require authorization/approval by the executive board and/or membership.

If the affiliate makes payments to an officer or other member for wages actually lost, the payment is referred to as a LOST TIME payment. The person receiving “lost time” should provide the union with a pay stub to verify that they actually lost wages or used vacation leave. The rate of pay by the union can be the member’s actual salary, an average, or an agreed upon rate for all members regardless of their individual hourly rate.

For payroll tax purposes, lost time must be treated as actual wages by the affiliate. This means that the affiliate is responsible for withholding payroll taxes for these payments, depositing these taxes and filing required reports with the IRS and state authorities.

In order for the member to be paid when the employer does not provide for “union leave”, the member must have lost wages or used vacation time. The Department of Labor does not approve of a person being paid by both their employer and the union and has been known to initiate criminal action when it finds this type of double compensation. The union should therefore not pay “lost time” when the member has been paid “union leave” by the employer.

OTHER TAXABLE ALLOWANCES

OFFICER ALLOWANCES/STIPENDS

Allowances/Stipends are paid to an officer or employee to cover miscellaneous out-of-pocket expenses incurred by the individual while conducting affiliate business. The recipient of an allowance/stipend is not required to provide any accounting or receipt for these payments.

Allowances/Stipends are “Non-Accountable” payments that must be reported as wages to the individual and to the IRS. The union as the employer must withhold taxes and complete all required payroll tax reporting forms of both the federal and applicable state government.

Affiliate Executive Board policy must clearly state the individuals authorized to receive allowances or stipends. That policy must also state the amount of each authorized payment. The policy should indicate the purpose of each allowance/stipend and the type of costs it is intended to cover should be specifically defined. All allowances/stipends must be approved by the membership or the Executive Board and such approval must be reflected in the meeting minutes of the respective body.

REIMBURSED DUES

Some affiliates pay allowances to officers that are exactly equal to the union dues paid by the member. Reimbursed dues are intended to compensate officers, executive board members and stewards for union related services. As a form of compensation, they are considered to be taxable payments by the IRS.

Affiliate Executive Board policy must clearly state which union positions qualify for this taxable reimbursement and establish the criteria under which the payment will be made (e.g., must attend union meetings). Authorization for these payments must be documented in the meeting minutes of the Executive Board or membership or be clearly stated in the affiliate’s constitution.

PER DIEM PAYMENTS

Payments made to an officer, employee or member to cover incidental costs incurred while performing union business -- whether they are called an allowance, stipend, dues reimbursement or in-town per diem -- are considered to be taxable as wages.

For per diem to be non-taxable, it must meet all of the criteria listed in the previous Non-Taxable Per Diem section. Per diem that is not supported by an expense report and was not for an overnight stay is taxable income.

Also, per diem paid under the “Accountable Plan” rules that is paid in excess of the federal per diem rates is taxable for the portion in excess of the allowable rate.

NON-ACCOUNTABLE PLAN REPORTING REQUIREMENTS

The following are financial responsibilities of the affiliate and the individual concerning payroll and NON-ACCOUNTABLE reimbursed expenses. Please note that all payments must be approved by the affiliate's membership and/or Executive Board.

Payroll Responsibilities of Affiliate

1. Prepare IRS Form W-2 at the end of the tax year and give to individual and IRS, reporting all taxable amounts.
2. Withhold payroll taxes and pay employer's matching Social Security and Medicare taxes.
3. File the appropriate payroll reports with federal and state authorities. A listing of the various reports is detailed in this section.

Payroll Taxes Overview

Because of the complexity of payroll tax preparation and filing requirements, as well as large penalties assessed for late filing, payroll tax preparation services are highly recommended. The following steps must be taken regarding payroll:

Withholding

- Obtain an IRS Form W-4, "Employee's Withholding Allowance Certificate", from the individual showing a Social Security number and number of exemptions claimed.
- Use the tax charts in Circular E to determine the amount of federal income tax to be withheld.
- Use state tax schedules to determine the amount of any state tax to be withheld.

Reporting To The IRS

- **Deposits of Amounts Withheld**
- Refer to Circular E, Employer's Tax Guide, which outlines the requirements for reporting and depositing payroll taxes withheld from wages.

Form 941, Employer's Quarterly Federal Tax Return

This form is prepared at the end of each quarter as a summary report on total payroll taxes due and deposited. All employment taxes (Social Security, Medicare and withheld federal income taxes) must be deposited electronically using the Electronic Federal Tax Payment System (EFTPS). To enroll, visit the EFTPS website at www.eftps.gov or call 1-800-555-4477.

Form 944, Annual Employment Tax Filing for Small Employers

If the affiliate's annual liability for Social Security, Medicare and withheld federal income taxes is \$1,000 or less, you can file Form 944 annually, rather than the quarterly Form 941's. Your deposits still must be made using EFTPS.

Form W-2, Wage and Tax Statements

A W-2 must be prepared at the end of the year and furnished to each individual who was paid taxable wages (including allowances, lost time, reimbursed union dues or other taxable payments) during the year. Copies are given to the individual, and a copy is forwarded to the IRS.

Form W-3, Transmittal of Income and Tax Statements

This form is used to transmit copies of each W-2 to the Social Security Administration at the end of the year. It must be filed by employers as a transmittal for Form W-2.

Form 940, Employer's Annual Federal Unemployment Tax Return (FUTA)

This form is prepared at the end of the year and a copy is forwarded to the IRS along with a check for the tax due (if applicable) by January 31. Consult the 940 instructions regarding possible quarterly deposits.

State Reporting

Comparable reporting must be made to state authorities of any state taxes withheld.

American Federation of State, County and Municipal Employees, AFL-CIO
Listing of Localities with Per Diem Rates Exceeding \$59
(Within the Continental US)
Effective October 1, 2022

FY 2023 Domestic Per Diem Rates - Effective October 1, 2022			
State	Primary Destination	County/Location Defined	FY23 M&IE
	Standard CONUS Rate applies to all destinations or counties not specifically listed		\$ 59
Alabama	Birmingham	Jefferson	\$ 69
Alabama	Gulf Shores	Baldwin	\$ 69
Arizona	Grand Canyon / Flagstaff	Coconino / Yavapai less the city of Sedona	\$ 74
Arizona	Kayenta	Navajo	\$ 64
Arizona	Phoenix / Scottsdale	Maricopa	\$ 69
Arizona	Sedona	City Limits of Sedona	\$ 79
Arizona	Tucson	Pima	\$ 64
Arkansas	Hot Springs	Garland	\$ 64
California	Antioch / Brentwood / Concord	Contra Costa	\$ 74
California	Bakersfield / Ridgecrest	Kern	\$ 64
California	Barstow / Ontario / Victorville	San Bernardino	\$ 64
California	Death Valley	Inyo	\$ 69
California	Eureka / Arcata / McKinleyville	Humboldt	\$ 69
California	Fresno	Fresno	\$ 69
California	Los Angeles	Los Angeles / Orange / Ventura / Edwards AFB less the city of Santa Monica	\$ 74
California	Mammoth Lakes	Mono	\$ 79
California	Mill Valley / San Rafael / Novato	Marin	\$ 74
California	Monterey	Monterey	\$ 74
California	Napa	Napa	\$ 79
California	Oakhurst	Madera	\$ 69
California	Oakland	Alameda	\$ 74
California	Palm Springs	Riverside	\$ 69
California	Point Arena / Gualala	Mendocino	\$ 79
California	Sacramento	Sacramento	\$ 69
California	San Diego	San Diego	\$ 74
California	San Francisco	San Francisco	\$ 79
California	San Luis Obispo	San Luis Obispo	\$ 74
California	San Mateo / Foster City / Belmont	San Mateo	\$ 74
California	Santa Barbara	Santa Barbara	\$ 74
California	Santa Cruz	Santa Cruz	\$ 69
California	Santa Monica	City limits of Santa Monica	\$ 79
California	Santa Rosa	Sonoma	\$ 74

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California	South Lake Tahoe	El Dorado	\$ 74
California	Stockton	San Joaquin	\$ 74
California	Sunnyvale / Palo Alto / San Jose	Santa Clara	\$ 74
California	Tahoe City	Placer	\$ 74
California	Truckee	Nevada	\$ 79
California	Visalia	Tulare	\$ 69
California	West Sacramento / Davis	Yolo	\$ 69
California	Yosemite National Park	Mariposa	\$ 79
Colorado	Aspen	Pitkin	\$ 79
Colorado	Boulder / Broomfield	Boulder / Broomfield	\$ 69
Colorado	Colorado Springs	El Paso	\$ 69
Colorado	Cortez	Montezuma	\$ 64
Colorado	Crested Butte / Gunnison	Gunnison	\$ 74
Colorado	Denver / Aurora	Denver / Adams / Arapahoe / Jefferson	\$ 79
Colorado	Douglas	Douglas	\$ 69
Colorado	Durango	La Plata	\$ 74
Colorado	Fort Collins / Loveland	Larimer	\$ 69
Colorado	Grand Lake	Grand	\$ 79
Colorado	Montrose	Montrose	\$ 69
Colorado	Silverthorne / Breckenridge	Summit	\$ 79
Colorado	Steamboat Springs	Routt	\$ 79
Colorado	Telluride	San Miguel	\$ 79
Colorado	Vail	Eagle	\$ 79
Connecticut	Bridgeport / Danbury	Fairfield	\$ 69
Connecticut	Hartford	Hartford	\$ 69
Connecticut	New Haven	New Haven	\$ 69
Connecticut	New London / Groton	New London	\$ 69
Delaware	Lewes	Sussex	\$ 64
Delaware	Wilmington	New Castle	\$ 64
District of Columbia	District of Columbia	Washington DC (also the cities of Alexandria, Falls Church and Fairfax, and the counties of Arlington and Fairfax, in Virginia; and the counties of Montgomery and Prince George's in Maryland)	\$ 79

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Florida	Boca Raton / Delray Beach / Jupiter	Palm Beach / Hendry	\$ 69
Florida	Bradenton	Manatee	\$ 64
Florida	Cocoa Beach	Brevard	\$ 74
Florida	Daytona Beach	Volusia	\$ 69
Florida	Fort Lauderdale	Broward	\$ 69
Florida	Fort Myers	Lee	\$ 64
Florida	Fort Walton Beach / De Funiak Springs	Okaloosa / Walton	\$ 69
Florida	Key West	Monroe	\$ 69
Florida	Miami	Miami-Dade	\$ 69
Florida	Naples	Collier	\$ 69
Florida	Orlando	Orange	\$ 69
Florida	Panama City	Bay	\$ 64
Florida	Pensacola	Escambia	\$ 64
Florida	Punta Gorda	Charlotte	\$ 64
Florida	Sarasota	Sarasota	\$ 69
Florida	Sebring	Highlands	\$ 64
Florida	St. Augustine	St. Johns	\$ 69
Florida	Stuart	Martin	\$ 69
Florida	Tallahassee	Leon	\$ 64
Florida	Tampa / St. Petersburg	Pinellas / Hillsborough	\$ 69
Florida	Vero Beach	Indian River	\$ 69
Georgia	Atlanta	Fulton / Dekalb	\$ 74
Georgia	Jekyll Island / Brunswick	Glynn	\$ 79
Georgia	Marietta	Cobb	\$ 64
Georgia	Savannah	Chatham	\$ 69
Idaho	Boise	Ada	\$ 74
Idaho	Coeur d'Alene	Kootenai	\$ 64
Idaho	Sun Valley / Ketchum	Blaine / Elmore	\$ 74
Iowa	Dallas	Dallas	\$ 69
Iowa	Des Moines	Polk	\$ 64
Illinois	Bolingbrook / Romeoville / Lemont	Will	\$ 64
Illinois	Chicago	Cook / Lake	\$ 79
Illinois	East St. Louis / O'Fallon / Fairview Heights	St. Clair	\$ 64
Illinois	Oak Brook Terrace	Dupage	\$ 64

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Indiana	Bloomington	Monroe	\$ 64
Indiana	Ft. Wayne	Allen	\$ 64
Indiana	Hammond / Munster / Merrillville	Lake	\$ 64
Indiana	Indianapolis / Carmel	Marion / Hamilton	\$ 69
Indiana	Lafayette / West Lafayette	Tippecanoe	\$ 64
Kansas	Kansas City / Overland Park	Wyandotte / Johnson / Leavenworth	\$ 64
Kansas	Wichita	Sedgwick	\$ 64
Kentucky	Boone	Boone	\$ 64
Kentucky	Kenton	Kenton	\$ 74
Kentucky	Lexington	Fayette	\$ 64
Kentucky	Louisville	Jefferson	\$ 64
Louisiana	Alexandria / Leesville / Natchitoches	Allen / Jefferson Davis / Natchitoches / Rapides / Vernon Parishes	\$ 64
Louisiana	Baton Rouge	East Baton Rouge Parish	\$ 69
Louisiana	New Orleans	Orleans / Jefferson Parishes	\$ 74
Maine	Bar Harbor / Rockport	Hancock / Knox	\$ 74
Maine	Kennebunk / Kittery / Sanford	York	\$ 69
Maine	Portland	Cumberland / Sagadahoc	\$ 64
Maryland	Aberdeen / Bel Air / Belcamp	Harford	\$ 64
Maryland	Annapolis	Anne Arundel	\$ 69
Maryland	Baltimore City	Baltimore City	\$ 69
Maryland	Baltimore County	Baltimore	\$ 64
Maryland	Cambridge / St. Michaels	Dorchester / Talbot	\$ 64
Maryland	Centreville	Queen Anne	\$ 64
Maryland	Columbia	Howard	\$ 69
Maryland	Frederick	Frederick	\$ 64
Maryland	Ocean City	Worcester	\$ 69
Massachusetts	Andover	Essex	\$ 64
Massachusetts	Boston / Cambridge	Suffolk, city of Cambridge	\$ 79
Massachusetts	Burlington / Woburn	Middlesex less the city of Cambridge	\$ 69
Massachusetts	Falmouth	City limits of Falmouth	\$ 69
Massachusetts	Hyannis	Barnstable less the city of Falmouth	\$ 69
Massachusetts	Martha's Vineyard	Dukes	\$ 79
Massachusetts	Nantucket	Nantucket	\$ 79
Massachusetts	Northampton	Hampshire	\$ 69

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Massachusetts	Pittsfield	Berkshire	\$ 64
Massachusetts	Plymouth / Taunton / New Bedford	Plymouth / Bristol	\$ 69
Massachusetts	Quincy	Norfolk	\$ 69
Massachusetts	Springfield	Hampden	\$ 64
Massachusetts	Worcester	Worcester	\$ 69
Michigan	Ann Arbor	Washtenaw	\$ 69
Michigan	Detroit	Wayne	\$ 64
Michigan	East Lansing / Lansing	Ingham / Eaton	\$ 64
Michigan	Grand Rapids	Kent	\$ 64
Michigan	Holland	Ottawa	\$ 64
Michigan	Kalamazoo / Battle Creek	Kalamazoo / Calhoun	\$ 64
Michigan	Mackinac Island	Mackinac	\$ 74
Michigan	Muskegon	Muskegon	\$ 64
Michigan	Petoskey	Emmet	\$ 64
Michigan	Pontiac / Auburn Hills	Oakland	\$ 64
Michigan	South Haven	Van Buren	\$ 64
Michigan	Traverse City	Grand Traverse	\$ 64
Minnesota	Duluth	St. Louis	\$ 79
Minnesota	Eagan / Burnsville / Mendota Heights	Dakota	\$ 69
Minnesota	Minneapolis / St. Paul	Hennepin / Ramsey	\$ 79
Minnesota	Rochester	Olmsted	\$ 64
Mississippi	Oxford	Lafayette	\$ 64
Mississippi	Southaven	Desoto	\$ 59
Mississippi	Starkville	Oktibbeha	\$ 64
Missouri	Kansas City	Jackson / Clay / Cass / Platte	\$ 64
Missouri	St. Louis	St. Louis / St. Louis City / St. Charles	\$ 64
Montana	Big Sky / West Yellowstone / Gardiner	Gallatin / Park	\$ 79
Montana	Helena	Lewis and Clark	\$ 64
Montana	Kalispell/Whitefish	Flathead	\$ 64
Montana	Missoula	Missoula	\$ 69
Nebraska	Omaha	Douglas	\$ 64
Nevada	Incline Village / Reno / Sparks	Washoe	\$ 69
Nevada	Las Vegas	Clark	\$ 69
New Hampshire	Concord	Merrimack	\$ 64
New Hampshire	Conway	Caroll	\$ 69

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New Hampshire	Laconia	Belknap	\$ 64
New Hampshire	Manchester	Hillsborough	\$ 64
New Hampshire	Portsmouth	Rockingham	\$ 64
New Jersey	Cherry Hill / Moorestown	Camden / Burlington	\$ 69
New Jersey	Eatontown / Freehold	Monmouth	\$ 69
New Jersey	Edison / Piscataway	Middlesex	\$ 69
New Jersey	Flemington	Hunterdon	\$ 69
New Jersey	Newark	Essex / Bergen / Hudson / Passaic	\$ 69
New Jersey	Parsippany	Morris	\$ 69
New Jersey	Princeton / Trenton	Mercer	\$ 69
New Jersey	Somerset	Somerset	\$ 64
New Jersey	Springfield / Cranford / New Providence	Union	\$ 69
New Jersey	Toms River	Ocean	\$ 69
New Mexico	Albuquerque	Bernalillo	\$ 69
New Mexico	Carlsbad	Eddy	\$ 64
New Mexico	Santa Fe	Santa Fe	\$ 69
New Mexico	Taos	Taos	\$ 64
New York	Albany	Albany	\$ 69
New York	Binghamton	Broome	\$ 64
New York	Buffalo	Erie	\$ 69
New York	Floral Park / Garden City / Great Neck	Nassau	\$ 74
New York	Glens Falls	Warren	\$ 69
New York	Ithaca	Tompkins	\$ 74
New York	Kingston	Ulster	\$ 69
New York	Lake Placid	Essex	\$ 79
New York	New York City	Bronx / Kings / New York / Queens / Richmond	\$ 79
New York	Niagara Falls	Niagara	\$ 69
New York	Nyack / Palisades	Rockland	\$ 69
New York	Poughkeepsie	Dutchess	\$ 69
New York	Riverhead / Ronkonkoma / Melville	Suffolk	\$ 69
New York	Rochester	Monroe	\$ 69
New York	Saratoga Springs / Schenectady	Saratoga / Schenectady	\$ 64
New York	Syracuse / Oswego	Onondaga / Oswego	\$ 64
New York	Tarrytown / White Plains / New Rochelle	Westchester	\$ 74

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New York	Troy	Rensselaer	\$ 64
New York	West Point	Orange	\$ 64
North Carolina	Asheville	Buncombe	\$ 64
North Carolina	Atlantic Beach / Morehead City	Carteret	\$ 64
North Carolina	Chapel Hill	Orange	\$ 74
North Carolina	Charlotte	Mecklenburg	\$ 69
North Carolina	Durham	Durham	\$ 64
North Carolina	Fayetteville	Cumberland	\$ 64
North Carolina	Greensboro	Guilford	\$ 64
North Carolina	Kill Devil Hills	Dare	\$ 74
North Carolina	Raleigh	Wake	\$ 64
Ohio	Akron	Summit	\$ 64
Ohio	Canton	Stark	\$ 64
Ohio	Cincinnati	Hamilton / Clermont	\$ 74
Ohio	Cleveland	Cuyahoga	\$ 69
Ohio	Columbus	Franklin	\$ 64
Ohio	Dayton / Fairborn	Greene / Montgomery	\$ 64
Ohio	Sandusky	Erie	\$ 64
Oklahoma	Oklahoma City	Oklahoma	\$ 64
Oregon	Beaverton	Washington	\$ 64
Oregon	Bend	Deschutes	\$ 64
Oregon	Clackamas	Clackamas	\$ 64
Oregon	Eugene / Florence	Lane	\$ 64
Oregon	Lincoln City	Lincoln	\$ 69
Oregon	Portland	Multnomah	\$ 74
Oregon	Seaside	Clatsop	\$ 69
Pennsylvania	Allentown / Easton / Bethlehem	Lehigh / Northampton	\$ 64
Pennsylvania	Bucks	Bucks	\$ 64
Pennsylvania	Chester / Radnor / Essington	Delaware	\$ 64
Pennsylvania	Gettysburg	Adams	\$ 64
Pennsylvania	Harrisburg	Dauphin County excluding Hershey	\$ 64
Pennsylvania	Hershey	Hershey	\$ 74
Pennsylvania	Malvern / Frazer / Berwyn	Chester	\$ 69
Pennsylvania	Montgomery	Montgomery	\$ 69
Pennsylvania	Philadelphia	Philadelphia	\$ 79

American Federation of State, County and Municipal Employees, AFL-CIO
Listing of Localities with Per Diem Rates Exceeding \$59
(Within the Continental US)
Effective October 1, 2022

FY 2023 Domestic Per Diem Rates - Effective October 1, 2022			
State	Primary Destination	County/Location Defined	FY23 M&IE
	Standard CONUS Rate applies to all destinations or counties not specifically listed		\$ 59
Pennsylvania	Pittsburgh	Allegheny	\$ 64
Pennsylvania	State College	Centre	\$ 69
Rhose Island	East Greenwich / Warwick	Kent	\$ 69
Rhose Island	Jamestown / Middletown / Newport	Newport	\$ 64
Rhose Island	Providence / Bristol	Providence / Bristol	\$ 64
South Carolina	Charleston	Charleston / Berkeley / Dorchester	\$ 79
South Carolina	Columbia	Richland / Lexington	\$ 64
South Carolina	Hilton Head	Beaufort	\$ 69
South Carolina	Myrtle Beach	Horry	\$ 69
South Dakota	Deadwood / Spearfish	Lawrence	\$ 74
South Dakota	Hot Springs	Fall River / Custer	\$ 64
South Dakota	Rapid City	Pennington	\$ 64
Tennessee	Brentwood / Franklin	Williamson	\$ 69
Tennessee	Chattanooga	Hamilton	\$ 64
Tennessee	Knoxville	Knox	\$ 64
Tennessee	Memphis	Shelby	\$ 69
Tennessee	Nashville	Davidson	\$ 79
Texas	Arlington / Fort Worth / Grapevine	Tarrant County / City of Grapevine	\$ 64
Texas	Austin	Travis	\$ 64
Texas	Big Spring	Howard	\$ 64
Texas	Corpus Christi	Nueces	\$ 64
Texas	Dallas	Dallas	\$ 69
Texas	Galveston	Galveston	\$ 64
Texas	Houston (L.B. Johnson Space Center)	Montgomery / Fort Bend / Harris	\$ 69
Texas	Midland / Odessa	Midland / Andrews / Ector / Martin	\$ 64
Texas	Plano	Collin	\$ 64
Texas	Round Rock	Williamson	\$ 64
Texas	San Antonio	Bexar	\$ 64
Texas	Waco	McLennan	\$ 64
Utah	Moab	Grand	\$ 69
Utah	Park City	Summit	\$ 79
Utah	Provo	Utah	\$ 64
Utah	Salt Lake City	Salt Lake / Tooele	\$ 64
Virginia	Charlottesville	City of Charlottesville / Albemarle	\$ 69
Virginia	Loudoun	Loudoun	\$ 69

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FY 2023 Domestic Per Diem Rates - Effective October 1, 2022			
State	Primary Destination	County/Location Defined	FY23 M&IE
	Standard CONUS Rate applies to all destinations or counties not specifically listed		\$ 59
Virginia	Lynchburg	Campbell / Lynchburg City	\$ 64
Virginia	Richmond	City of Richmond	\$ 64
Virginia	Roanoke	City limits of Roanoke	\$ 59
Virginia	Virginia Beach	City of Virginia Beach	\$ 64
Virginia	Wallops Island	Accomack	\$ 64
Virginia	Williamsburg / York	James City / York Counties / City of Williamsburg	\$ 64
Vermont	Burlington	Chittenden	\$ 69
Vermont	Manchester	Bennington	\$ 79
Vermont	Montpelier	Washington	\$ 69
Vermont	Stowe	Lamoille	\$ 79
Vermont	White River Junction	Windsor	\$ 64
Washington	Everett / Lynnwood	Snohomish	\$ 74
Washington	Ocean Shores	Grays Harbor	\$ 74
Washington	Olympia / Tumwater	Thurston	\$ 74
Washington	Port Angeles / Port Townsend	Clallam / Jefferson	\$ 74
Washington	Richland / Pasco	Benton / Franklin	\$ 69
Washington	Seattle	King	\$ 79
Washington	Spokane	Spokane	\$ 74
Washington	Tacoma	Pierce	\$ 69
Washington	Vancouver	Clark / Cowlitz / Skamania	\$ 74
Wisconsin	Appleton	Outagamie	\$ 59
Wisconsin	Brookfield / Racine	Waukesha / Racine	\$ 64
Wisconsin	Madison	Dane	\$ 64
Wisconsin	Milwaukee	Milwaukee	\$ 64
Wisconsin	Sturgeon Bay	Door	\$ 74
West Virginia	Charleston	Kanawha	\$ 64
Wyoming	Cody	Park	\$ 69
Wyoming	Jackson / Pinedale	Teton / Sublette	\$ 79



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June 4, 1992

To: AFSCME Council & Local Union Financial Officers
From: WILLIAM LUCY International Secretary-Treasurer
Subject: TAX TREATMENT OF LOCAL UNION OFFICER ALLOWANCES

As part of our on-going effort to assure that our Local Unions remain in conformance with ever-changing Internal Revenue Service (IRS) rules and regulations, we recently received certain information that may directly affect your Local's handling of certain allowance (and other) payments to officers and members.

Per advice from an outside tax counsel and our own in-house counsel, the IRS, on a recurring basis, is treating allowances paid by unions to their officers as WAGES SUBJECT TO WITHHOLDING AND REPORTING. This is consistent with the IRS's treatment of local union officers as "employees" and the payments made to them as "wages."

Attached please find a copy of IRS Letter Ruling 9138036 (publication date September 20, 1991) containing facts which are fairly close to the officer situation which exists in many AFSCME locals. In this letter the IRS concludes that the union officials involved are employees, and that payments to them, including allowances, stipends and lost-time are WAGES subject to withholding.

All AFSCME Locals paying monthly allowances, meeting allowances, lost-time, reimbursed dues and other undocumented payments to officers and members must begin treating such payments as WAGES. This requires the establishment of PAYROLL RECORDS as outlined in the revised FINANCIAL STANDARDS CODE accompanying this letter.

Please note that reimbursed expenses to officers and members, when supported by receipts and/or other documentation, are neither taxable nor reportable.

WL:ep

June 21, 1991

Dear Sir:

This is in response to the request for a ruling we received to determine the federal employment tax status of the above named workers with regard to services they performed from January 1, 1990 through December 31, 1990 as union officers.

According to the information we received, the workers were elected to serve as president and secretary/treasurer of the union for one year terms. As such, they handled all union business including correspondence, financial matters, and recording of the minutes of union meetings. They were paid a nominal salary of \$35 a month from January through March, and \$75 a month from April through December. The workers did not receive any benefits and the union did not carry worker's compensation insurance on them. In addition, no income tax or social security taxes were withheld from the workers' salaries and they were issued Forms 1099.

Although the workers were not given any training by the union, they were required to perform their services according to the by-laws of the union and according to the voting of the union members. The union retained the right to change the methods used by the workers and to direct them as to how to perform their services. While they were not directly supervised in the performance of their services, the union's books were audited on an annual basis.

All materials used by the workers in the performance of their services were provided by the union and reimbursed the workers for any expenses they incurred including, gasoline, telephone, and postage costs. It was understood that the workers would perform their services personally and they did not have any helpers.

The workers performed their services on a part-time basis, approximately one-half to one hour a day. They were not restricted from performing similar services for others, but they did not. Although the workers retained the right to terminate their relationship with the union at any time, the union did not have the right to discharge the workers. They performed their services under the union's name and did not advertise their availability to perform similar services for others or represent themselves to the public as being in the business to perform such services. The workers did not have a financial investment in a business related to the performance of their services for the union and, accordingly, did not assume the risk of realizing a profit or incurring a loss.

Section 3121(d) (2) of the Internal Revenue Code provides that the term "employee" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.

The question of whether an individual is an independent contractor or an employee is one of fact to be determined upon consideration of the facts and the application of the law and regulations in a particular case. Guides for determining the existence of that status are found in three substantially similar sections of the Employment Tax Regulations; namely, sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1 relating to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding, respectively.

Section 31.3121(d)-1(c) (2) of the regulations provides that generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the results to be accomplished by the work, but also as to the details and means by which the result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done, but also as to how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which services are performed; it is

sufficient if he or she has the right to do so. The right to discharge is also an important factor indicating that the person possessing that right is the employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished and not as to the means and methods for accomplishing the result, he is an independent contractor.

In determining whether an individual is an employee under the common law rules, twenty factors have been identified as indicating whether sufficient control is present to establish an employer-employee relationship. The twenty factors have been developed based on an examination of cases and rulings considering whether an individual is an employee. The degree of importance of each factor varies depending on the occupation and the factual context in which services are performed. See Rev. Rul. 87-41, 1987-1 C.B. 296.

Consideration must also be given to such factors as the continuity of the relationship and whether or not the individual's services are an integral part of the business of the employer as distinguished from an independent trade or business of the individual himself in which he assumes the risk of realizing a profit or suffering a loss. See *United States v. Silk*, 331 U.S. 704 (1947), 1947-2 C.B. 167 and *Bartels v. Birmingham*, 332 U.S. 126 (1947), 1947-2 C.B. 174.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as a partner, co-adventurer, agent, independent contractor, or the like.

Revenue Ruling 68-539, 1968-2 C.B. 422 concerns union members who performed services as union representatives in negotiations with the company. The union representatives were compensated by the union for lost wages when they were required to take time off from their regular employment to conduct union business. The ruling holds that the union was the employer of the representatives for federal employment tax purposes, and that payments made to them constituted wages for federal employment tax purposes.

Applying the common law to the facts in this case, the fact that the workers are required to perform their services in accordance with the union by-laws and the voting of the union members is a factor indicating control over the workers. Workers who are required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. The control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions, whether or not they actually exercise that right. See Rev. Rul. 68-598, 1968-2 C.B. 464.

If a worker's services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the workers were required to perform their services personally thus indicating the existence of an employment relationship. See Rev. Rul. 55-695, 1955-2 C.B. 410.

A continuing relationship between a worker and the person or persons for whom the services are performed is another indication of an employer-employee relationship. The fact that the workers were elected to serve one-year terms as union officers indicates that a continuing relationship existed between the union and the workers and, accordingly, that an employment relationship was present. See *United States v. Silk*, 331 U.S. 704 (1947), 1947-2 C.B. 167.

Payment by the hour, week, or month is another factor that generally points to an employer-employee relationship, as opposed to payment on a straight commission basis, which generally indicates that the worker is an independent contractor. The workers in this case were paid on a monthly basis thus indicating that an employment relationship existed. See Rev. Rul. 74-389, 1974-2 C.B. 330.

If the person or persons for whom the services are performed ordinarily pay the worker's business and or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities. The workers in this case incurred expenses for telephone calls, gasoline, and postage and were reimbursed by the union again indicating the existence of an employment relationship. See Rev. Rul. 55-144, 1955-1 C.B. 483.

If the person or persons for whom the services are performed furnish tools, materials, and other equipment, that factor tends to show the existence of an employment relationship. In this case, the union provided all materials used by the workers in the performance of their services indicating an employment relationship. See Rev. Rul. 71-524, 1971-2 C.B. 346.

If a worker invests in facilities that are used in performing services and are not typically maintained by employees, that factor tends to indicate that the worker is an independent contractor. On the other hand, a lack of investment in facilities tends to indicate dependence upon the person or persons for whom the services are performed for such facilities and, accordingly, the existence of an employer-employee relationship. In this case the workers did not have a financial investment in facilities and, accordingly, an employment relationship is indicated. See Rev. Rul. 71-524. In connection, a worker who can realize a profit or incur a loss as a result of his or her services is generally an independent contractor, while the worker who cannot, is an employee. Because the workers in this case did not have a financial investment in facilities related to the performance of their services for the union, they could not incur a loss or realize a profit, indicating an employment relationship. See Rev. Rul. 70-309, 1970-1 C.B. 199.

The right of a worker to terminate his or her relationship with the person or persons for whom the services are performed at any time without incurring a liability, that factor indicates that an employer-employee relationship is present. In this case, because the workers were free to terminate their relationship with the union at any time, an employment relationship is indicated. See Rev. Rul. 70-309.

Accordingly, applying the law, regulations, and principles set forth in the revenue rulings, in particular, Rev. Rul. 68-539, we conclude that the worker was an employee of the firm for purposes of the FICA, the FUTA, and federal income tax withholding.

This ruling applies to all workers who perform similar services under similar circumstances for the firm. It is directed only to the taxpayer to whom it is addressed. Under section 6110(j)(3) of the Code this ruling may not be used or cited as precedent.

A copy of this ruling is being forwarded to the District Director's office in * * *.

Sincerely,

James J. McGovern
Assistant Chief Counsel
By: Ronald L. Moore
Technical Assistant
Office of the Assistant Chief Counsel
(Employee Benefits and Exempt Organizations)

PLR 9138036, 1991 WL 778107 (IRS PLR)
Copr. (C) West 2004 No Claim to Orig. U.S. Govt. Works

PLR 9138036 ()