

Tax reporting of employee deferrals and employer contributions to Section 457(b) plans

Tax reporting for contributions to Internal Revenue Code Section 457(b) plans depends on the employment status of the plan participant. Tax information for employees is reported using Form W-2, while tax information for **independent contractors** (i.e., agents or members of the Board of Directors) is reported using Form 1099-NEC.

Employee tax reporting (Form W-2)

Amounts deferred by employees or amounts contributed by employers to nonqualified deferred compensation plans are not subject to income taxes until benefit payments are considered received.

Employee deferrals are subject to Social Security and Medicare withholding (FICA) when the deferral occurs. **Employer contributions** are subject to FICA when the contributions are no longer subject to a substantial risk of forfeiture, normally when vesting of these contributions occurs. In IRC Section 457(b) plans, employer contributions are normally 100% vested immediately.

- **Wage reporting.** Since employee deferrals and employer contributions to deferred compensation plans are not subject to income taxes until distribution from the plan, these amounts should not be included in amounts reported in Box 1, Wages, Tips, and Other Compensation.
- **Social Security and Medicare (FICA) reporting.** *Employee deferrals* into deferred compensation plans are subject to FICA taxes at the time of deferral, as if the employee had received the compensation. *Employer contributions* are subject to FICA taxes at the later of:
 - When the services are performed.
 - When the employee no longer has a substantial risk of forfeiting the deferred compensation. This usually occurs when the employer contributions become vested.

Since IRC Section 457(b) plans normally have immediate 100% vesting, FICA and FUTA taxes are due when employer contributions are made to the participant's account. The employer must withhold the participant's FICA taxes and pay the employer's FICA match at the time of the employee deferrals and employer contributions. These taxes are due only on the contribution amount, not on earnings in the account. **Note:** Section 501(c)(3) organizations are exempt from FUTA.

Social Security wages should be reported in Box 3 (up to the wage base minimum), and Social Security taxes withheld should be reported in Box 4. Medicare wages should be reported in Box 5, with Medicare taxes withheld reported in Box 6.

Any FICA wages reported in Box 3 or Box 5 that are related to services performed in **prior** years should be reported in Box 11, Nonqualified Plans. This would normally only include changes in vested amounts in the employer contribution account that are related to prior year's contributions (generally

not applicable to IRC Section 457(b) plans). Amounts in Box 3 or Box 5 that are related to current year services, either employee deferrals or employer contributions, shouldn't be reported in Box 11.

- **Box 12 reporting.** The total of current year employee deferrals and employer contributions should be reported in Box 12, using code G. This information is used by the IRS to determine if contributions in excess of IRC Section 457(b) limits have been made to a participant's account.

Independent contractor reporting (Form 1099-NEC)

Independent contractors subject to Form 1099-NEC reporting, such as agents or members of the organization's Board of Directors, may be eligible to participate in a deferred compensation plan. No income tax or self-employment (SECA) taxes are due on deferrals, employer contributions, or earnings in the plan. Therefore, **no Form 1099-NEC should be issued** for amounts deferred or employer contributions to the plan. Independent contractors will receive a Form 1099-NEC and pay all taxes at the time of distribution from the plan.



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