



SOCIAL SECURITY

Honolulu District Office
300 Ala Moana Blvd.
Room 1-114
Honolulu, HI 96850

December 12, 2014

Alston Hunt Floyd & Ing
Attn: Paul Alston
1001 Bishop St.
Suite 1800
Honolulu, HI 96813

Thank you for your inquiry regarding *David Garner v. State of Hawai'i Department of Education*.

Per IRS regulations, IRS considers back pay as wages for the year in which the back pay is awarded. Although the wage allocation in this settlement is for tax years 2000 to 2005, the payout occurred in 2014. As such, the employer would report these wages under (TY) 2014's W-2s, since this is the year the wages were paid out and received. This conforms to our wage policy which states, "To meet the needs of both IRS and SSA, employers should report statutory back pay award amount(s) as wages (for the year in which received) on the employee's Form(s) W-2 and form(s) W-3 (or Magnetic media wage reports)." Employers have from January to March to issue W-2s for employees, so for TY 2014, the employer has from January 2015 to March 2015 to issue them.

After the employer submits TY 2014's W-2s, they will then have to send a special wage report to the Social Security Administration's (SSA) CPS Back Pay Staff in Baltimore, Maryland using the allocation chart described in IRS Publication 957, Table 1. The chart must include all of the information listed in section C.1 of Social Security Policy Instruction *RM 001105.009 Handling Employer Inquiries About Filing Wage Reports* (enclosed). This policy includes the mailing address for the CPS Back Pay Staff. An electronic version of RM 001105.009 is available on the SocialSecurity.gov website using the following address, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0101105009>. The employer should include a copy of the court order/settlement agreement, when submitting the special wage report.

SSA will reallocate the back pay amount to the appropriate report periods after the original wage reports are processed to the earnings records and the back pay information (e.g., special wage report) is submitted to SSA's CPS Back Pay Staff. Any other wages reported in the tax year for the award payment that was paid to the employee will remain on the earnings records. The employer should **not** prepare Forms W-2c to reallocate wages for Social Security wage purposes.

Lastly, in preparation for correcting the large number of wage records resulting from this settlement, we ask that a copy of the court decision, awarding the back pay, and confirmation of the employer's EIN be sent as soon as possible. This copy is in addition to the copy the employer will submit with the Special Wage Report. We recommend the employer send all documents to SSA via certified mail, retaining a complete copy of everything sent. We cannot accept the material on a thumb drive due to electronic security risks.

Please send a copy of the court decision and EIN to:

Social Security Administration
Attn: Malia Taylor
300 Ala Moana Blvd.
Room 1-114
Honolulu, HI 96850

Sincerely,

Honolulu Social Security Administration

Social Security

The Official Website of the U.S. Social Security Administration

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Program Operations Manual System (POMS)

Effective Dates: 03/26/2013 - Present

TN 3 (10-94)

RM 01105.009 Handling Employer Inquiries About Filing Wage Reports

A. Introduction

SSA, rather than IRS, provides the basic wage reporting instructions to employers who file their reports on magnetic media. In addition, SSA provides significant input to the design and use of paper W-2 reports since such reports must be compatible with SSA systems for effective AWR processing. For these reasons, employers may be referred to SSA by IRS district offices for answers to wage reporting questions. In addition, employers and tax preparers may contact SSA offices on their own with such questions — particularly during the “tax season” when both income tax and employment tax returns are being prepared. SSA will provide the information employers need to file accurate and timely wage reports, to the extent possible.

B. Policy — guidelines

The following policy guidelines apply:

- Questions that FO's receive from employers and tax preparers about filing wage reports with SSA should be answered when the answer is clearly provided in POMS, Program Circulars, or other SSA informational or instructional materials.

DEFINITION: Questions about “filing wage reports” means those questions that concern what form to file, what kind of information is to be reported, where to file reports, etc. It does not mean questions involving tax laws, such as whether deferred compensation is income taxable under certain conditions and thus should be reported as income on Form W-2.

- Questions about general employer tax responsibilities that can be answered by referring to RM 01103.000 should be answered by FO's. However, other questions about tax matters should be referred to IRS. Inquirers with access to computer and modem facilities may be referred to IRS' electronic bulletin board system for additional tax information on 1-304-263-2749.
- Questions about filing reports on magnetic media can usually be answered by referring the inquirer to SSA's publication TIB-4 which is sent at the end of the year to each magnetic media filer. (See RM 01105.009C.1.b. for a description of this publication). Only questions that the inquirer cannot answer by referring to readily available TIB-4 instructions should be referred to the Magnetic Media Coordinator (Wage Specialist) in the Regional Office serving the employer. (See RM 01105.039 for the address and telephone numbers of these Coordinators/Specialists).
- Questions received by TSC's should be handled in accordance with the Teleservice Center Operating Guide, "Annual Wage Reporting" Chapter.
- FO's may make local arrangements with IRS district offices to obtain a supply of IRS publications on employer reporting responsibilities for FO use in responding to inquiries.

C. Policy — backpay

1. Inquiries about filing backpay reports

Back-pay **under a statute** is a payment by an employer pursuant to an award, determination or agreement approved or sanctioned by a court or administrative agency charged with enforcing a Federal or State statute protecting an employee's right to employment or wages. As indicated in RS 01401.130, RS 01401.110, and RS 01401.140, IRS and SSA treat back pay under a statute in different ways. IRS considers back pay under a statute as wages for the year in which the back pay award is paid (for Social Security and Medicare and/or MQGE wages (Medicare Qualified Government Employment)) for taxation purposes.

SSA treats statutory back pay as wages paid in the periods in which they should have been paid **for Social Security purposes**. The authority for this allocation is based on the U.S. Supreme Court decision, *Social Security Board v. Joseph Nierotko*, 327 U.S. 358 (1946).

To meet the needs of both IRS and SSA, employers should report statutory back pay award amount(s) as wages (for the year in which received) on the employee's Form(s) W-2 and Form (s) W-3 (or Magnetic media wage reports). If an employer did not include these wages on a previously filed Form W-2, then the employer should prepare a wage correction report (Form (s) W-2c and Form(s) W-3c (or Magnetic media)) to add the amount of the back pay award to the wages previously reported. Employers should also prepare a special report and send it to:

Social Security Administration

Attn: CPS Back Pay Staff

7-B-15 SWT

1500 Woodlawn Drive

Baltimore, MD 21241-0001

This report should include the following information:

- a. A signed statement citing the statute under which the back pay was paid.
- b. The employer's identification number (EIN) assigned by the IRS. (This is the same number shown in box b of the 1993 Form W-2.).
- c. The name and telephone number of a person SSA can contact if there are questions concerning the back pay case and the employees involved.
- d. A list of the affected employee(s) containing:
 - The employee's name and Social Security number (SSN).
 - The back pay award amount, **excluding** any amounts which are specifically damages or penalties.
 - The tax year in which the back pay was paid (and reported).
 - The total amount of wages paid (if any) to each employee and reported on that same tax year's wage report. **Exclude** from these totals any amount of back pay included in that wage report.

For tax years prior to 1991, list of Social Security and/or MQGE wages.

For tax years 1991 and later, separate list for Social Security and Medicare and/or MQGE wages.

If the employer did not pay wages to the employee in that same tax year, the employer should indicate that fact.

- The period (month and year beginning and ending the period) for which the back pay was awarded. Show the amount allocated each tax year for the employee (based on the number of months in each year in the period) for which the back pay was awarded. (If the employer is allocating to periods before January 1, 1978, SSA needs the wage amounts by calendar quarter, i.e., quarters ending March 31, June 30, September 30 and December 31.)

SSA will reallocate the back pay amount to the appropriate report periods after the original wage reports are processed to the earnings records and the back pay information is submitted to SSA. Any other wages reported in the tax year the award payment was paid to the employee will remain on the earnings records.

NOTE: Employers should **NOT** prepare Forms W-2c to **reallocate** wages for Social Security wage purposes.

EXCEPTION: If a State or local government employer covered by an agreement under Section 218 of the Social Security Act, inquires about reporting back pay under a statute when the award was **paid to an employee before January 1, 1987**, they should contact their State Social Security Administrator's office. That office can contact ORSI for further information, if necessary. See SL 80001.820 for more information.

2. Requests for copies of processed W-2's

Employers may request copies of W-2's previously filed with SSA. Any such requests that are not related to Social Security program purposes, but are tax issues should be referred to an IRS district office. A "program purpose" is involved if a question arises about the accuracy of SSA's posted earnings records (e.g. a claims or pre-claims earnings discrepancy investigation; disagreement with an SSA statement of earnings; a "sensitive" employer inquiry — see RM 01105.020.)

If the request is related to Social Security programs, a microprint copy of the needed W-2's from OCRO will be requested using the same procedures described in RM 03870.045.

3. Inquiries about SSA requests for SSN/Employee name information

About 7 million W-2 wage reports that SSA receives each year have name/SSN data that do not match NUMIDENT entries and so the reports cannot be posted to earnings records but are entered in the Suspense File. Correspondence (Form SSA-3365-C1) is sent to each employee at the address shown on the W-2 in an attempt to identify the correct SSN.

Where the W-2 does not show the employee's address, Form SSA-4002-C1 (Request for Social Security Number or Name Information) is sent to the employer. Any employer inquiries about the form should be handled by explaining why it was sent and the employer should be encouraged to provide the requested information to the DOC as soon as possible.

REFERENCE: For an exhibit of Form SSA-3365-C1 and Form SSA-4002-C1 see NL 00901.050.

D. Procedure

1. General

- a. Resolve questions about filing wage reports with SSA by referring to the questions and answers provided in RM 01105.015. Resolve questions about filing wage reports with

SSA by referring to SSA's Employer W-2 Filing Instructions and Information website, or by calling 1-800-772-6270.

Refer to an IRS district office employer inquiries about employment tax responsibilities that require more than the general information provided in this subchapter and RM 01103.000.

- b. Refer inquirers asking about specifications for magnetic media reports to SSA's Technical Information Bulletin (TIB) No 4, "Submitting Annual W-2 Copy A Information to the Social Security Administration."

REMINDER: TIB-4 describes procedures for filing magnetic media reports and data format layouts. It also has exhibits of forms that employers can copy and use for transmitting their reports. Copies of TIB-4 may be obtained from Regional Magnetic Media Coordinators (Wage Reporting Specialists) in regional offices.

Refer inquirers with access to computer and modem facilities to SSA's electronic bulletin board system for TIB-4 specifications or other magnetic media W-2 filing information, which can be reached by calling 1-410-965-1133.

For inquiries about magnetic media filing that cannot be resolved by simply referring the inquirer to TIB-4 instructions refer to the appropriate Magnetic Media Coordinator (Wage Reporting Specialist) — see list in RM 01105.039.

- c. Refer inquirers asking about where to find the wage reporting requirements set out in writing to these IRS Publications as appropriate:
- Instructions for Filing Form W-2
 - Circular E (Employer's Tax Guide)
 - Circular A (Agricultural Employer's Tax Guide)
 - Circular PR for employers in Puerto Rico
 - Circular SS for employers in American Samoa, Guam, Virgin Islands, or the Commonwealth of the Northern Mariana Islands.

2. Requests for wage reporting forms

Refer employers requesting wage report forms to the forms order blank, Form 7018-A, included in IRS publication 393 sent to employers in the last quarter of each year (see RM 01105.030 for exhibit of form).

NOTE: If an employer did not receive this publication, the employer may request the needed forms by writing to IRS. The inquirer may also request the forms by calling IRS at 1-800-829-3676. See RM 01105.030 for a listing of IRS addresses for written forms requests.

3. Inquiries about unprocessed wage reports submitted to SSA

- a. Refer inquiries about unprocessed magnetic media reports returned to the employer for correction to OCRO's Magnetic Media Resubmittal Section in Baltimore, Maryland, Telephone No. (410) 965-4241.
- b. Handle inquiries about wage reports not processed or processed incorrectly by SSA under the "sensitive" employer inquiry procedures set out in RM 01105.020.
- c. Handle inquiries regarding AWR reconciliation matters under instructions provided in RM 02070.010.

To Link to this section - Use this URL:

<http://policy.ssa.gov/poms.nsf/lnx/0101105009>

RM 01105.009 - Handling Employer Inquiries About Filing Wage Reports -

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