AGENDA
MORGAN COUNTY COMMISSION
77 Fairfax Street, Room 101
Berkeley Springs, WV 25411

August 2, 2012 - 9:30 AM Open Meeting

9:30 AM- ADMINISTRATION & APPROVE MINUTES

Assessor's Exonerations

Carol York, Grants Administrator- Underage Drinking Laws Contract Resolution & MOU
WV Brownsfield FOCUS Plus Grant Application Resolution
Purdue Pharma IBR Grant- $40,000
Purdue Pharma PDI Grant- $20,000
Juvenile Accountability Block Grant Teen Court Grant- $20,000
Juvenile Justice & Delinquency Prevention PRO Grant- $20,000
PRO Agreement & Grant Contract Resolution

Court Order for Fire Board- Mark Miller

AGENDA ITEMS

10:00 AM- Dave McDonald, Information Technology- Demonstration of maintenance ticket data base

10:15 AM- Vince Shambaugh, Sheriff- Courthouse Issues with Security

10:30 AM- Debra Kesecker, County Clerk- Taxable Employee Benefits

ADMINISTRATOR'S ITEMS

Signing of AIO Contract

Request for commission appointments to the Criminal Corrections Board

Morgan County Commission

77 Fairfax Street, Room 101
Berkeley Springs, West Virginia 25411
304-258-8540

-COMMISSIONERS-

BRENDA J. HUTCHINSON
5154 MILO SCHOOL ROAD
GREAT CACAPON
WV 25422
304-947-7713

STACY A. DUGAN
401 S. LAUREL AVENUE
BERKELEY SPRINGS
WV 25411
304-258-9648

BRADLEY J. CLOSE
380 DRY RUN ROAD
BERKELEY SPRINGS
WV 25411
304-258-3795

RESOLUTION

WHEREAS; The Commission of Morgan County met on August 2, 2012 with a quorum present and passed the following resolution;

THEREFORE,
BE IT RESOLVED; This 2nd day of August 2012 that the Morgan County Commission authorizes The Honorable Stacy A. Dugan of the Morgan County Commission to act on its behalf to enter into a contractual agreement with the Division of Justice and Community Services to receive and administer grant funds pursuant to provisions of the DJCS Enforcing Underage Drinking Laws Program Grant, grant #: 11-EUD-016 for $8,650.00.

_____
Stacy A. Dugan, President
Morgan County Commission

_____
Brenda J. Hutchinson
Morgan County Commission

_____
Bradley J. Close
Morgan County Commission

ATTEST: _____
Debra A. Kesecker
Clerk of the County Commission

Morgan County Commission

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RESOLUTION

WHEREAS; The Commission of Morgan County met on August 2, 2012 with a quorum present and passed the following resolution;

THEREFORE,
BE IT RESOLVED; This 2nd day of August 2012 that the Morgan County Commission authorizes The Honorable Stacy A. Dugan of the Morgan County Commission to act on its behalf to enter into a contractual agreement with the Division of Justice and Community Services to receive and administer grant funds pursuant to provisions of the DJCS Enforcing Underage Drinking Laws Program Grant, grant #: 10-EUD-015 for $1,325.00.

_____
Stacy A. Dugan, President
Morgan County Commission

_____
Brenda J. Hutchinson
Morgan County Commission

_____
Bradley J. Close
Morgan County Commission

ATTEST: _____
Debra A. Kesecker
Clerk of the County Commission

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Memorandum of Understanding

Between the Morgan County Commission and the Morgan County Partnership for the WV Division of Justice and Community Services (DJCS) for the County Fiscal Year 2012-2013 for the Administration of the Enforcing Underage Drinking Laws (EUDL) Grant Programs #'s: 10-EUD-015 and 11-EUD-016

This Memorandum of Understanding (MOU), made this 2th day of August 2012, and effective from **July 1, 2012 through June 30, 2013**, by and between the Morgan County Commission (MCC) and the Morgan County Partnership (MCP), hereby establishes that MCC and MCP agree as follows:

Section I. The Morgan County Commission will:

1. Be the fiscal agent for the MCP for the above referenced grant program;

2. Provide oversight to ensure the MCP is administering the grant program in accordance with the terms and conditions of the grant contract and in accordance with the grant program's administrative guidelines.

3. Provide fiscal management and support for the **10-EUD-015 and 11-EUD-016 grant programs**; to include the following:
   a. Receive, review and approve invoices from the Partnership for payment by the MCC, (invoices are due on the first and third Monday of the month, and payments will be made on first and third Thursday of the month).
   b. Process invoices and make payments to designated vendors.
   c. Receive, review and approve monthly Requests for Reimbursement (draw downs).
   d. Receive draw down payments from the grant agency and reconcile to Requests for Reimbursement.
   e. Promptly advise the Partnership, the County Administrator and the county Chief Deputy Clerk budget administrator of any variance.
   f. Maintain hardcopy and electronic records of all grant activities and transactions.

4. Assist the Partnership's Executive Director in tracking of project financials;

5. Provide prompt notification and processing of grant 'De-obligation' notices to the Morgan County Partnership, the Morgan County Commission President, the Morgan County County Administrator, and the County Clerk's Office Chief Deputy Clerk;

6. At the termination of the grant contract the Grants Administrator will take appropriate action to ensure any 'de-obligated' funds are removed from the county budget system.

Section II. The Morgan County Partnership will:

1. Implement the **10-EUD-015 and 11-EUD-016 grant** projects as guided by the work plan;

2. Ensure the Partnership is administering the grant program in accordance with the terms and conditions of the grant contract and in accordance with the grant program's administrative guidelines;

3. Not 'Supplant' grant funds; specifically, the DJCS contract Standard Conditions and Assurances #19 states, "Grant funds must be used to supplement existing funds for program activities and may not replace (supplant) funds that have been appropriated for the same purpose....."
   a. *Supplanting exists when funds from one grant source are used pay for services and/or activities that another funding source is paying for or could pay for* either through available funds or funds that could be made available;

4. Maintain accurate detailed financial records and MS Excel spreadsheet files to ensure management of project budget in accordance with the approved award; to include awarded and matching funds;

5. Prepare and provide accurate invoices and up to date Microsoft Excel spreadsheet files of all invoices, payments, variance, and adjustment requests and approvals to the MCC Grant Administrator and County Administrator by 3:00PM on Mondays during the first and third weeks of the month;

6. Prepare required monthly financial expenditures, matching funds, and activity reports and provide to the MCC Grants Administrator and County Administrator by the fourteenth (14th) day of the following month such that the reports can be processed and received by the grant agency according to the terms of the grant contract; (***ref. contract provision #7 – "To be eligible for any and all payments of the grant amount, the Grantee shall submit a Request for Funds once per month to DJCS. Upon of receipt of said request, DJCS shall review the same for reasonableness and appropriateness; and if approved, will cause a warrant to be requested on that sum considered reasonable and appropriate. It is expressly understood that the total compensation shall not exceed the amount set forth in Paragraph Five hereinbefore cited and said compensation will be expended only as outlined in the budget sections of Attachment A, unless written approval of modification of the***

budget is signed by the parties hereto. Grantee shall submit a fiscal report detailing expenditures to DJCS by the twentieth (20th) day of each month");

7. Respond to all notifications of payment variance by contacting the grant agency specialist to identify and resolve reasons for variance; continually advise MCC Grant Administrator and MCC County Administrator of status;

8. Make payment of any declined invoice amount variances that cannot be rectified with the grant agency within 60 days of the initial notification;

9. Assist in the distribution of information;

10. Assist on sustainability efforts;

11. Coordinate project activities.

Section III.

1. MCC understands that items purchased using grant funds are the property of MCP and will follow the project regardless of whether MCC is the fiscal agent for future MCP grants and projects.

2. The MCP agrees to indemnify the Commission for any costs associated with variances in payment due to denied or disallowed expenditures or invoices.

In witness whereof, the parties hereto have caused this MOU to be executed as of the date listed above.

Morgan County Commission

By: _____
Stacy A. Dugan

Title: _____
President

Date: _____

Morgan County Partnership

By: _____
Kristin Willard

Title: _____
Executive Director

Date: _____

Morgan County Commission

77 Fairfax Street, Room 101
Berkeley Springs, West Virginia 25411
304-258-8540

-COMMISSIONERS-

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304-258-3795

RESOLUTION

WHEREAS; The Morgan County Commission is in support of the FOCUS West Virginia Brownfields organization FY2013 FOCUS Plus grant program;

THEREFORE,
BE IT RESOLVED; This 2nd day of August 2012 that the Morgan County Commission authorizes Stacy A. Dugan, its President, as the official representative for the Commission in the administration of the 2013 FOCUS WV Brownfields FOCUS Plus Grant Program.

_____
Stacy A. Dugan, President
Morgan County Commission

_____
Brenda J. Hutchinson
Morgan County Commission

_____
Bradley J. Close
Morgan County Commission

ATTEST: _____
Debra A. Kesecker
Clerk of the County Commission

Morgan County Commission

77 Fairfax Street, Room 101
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RESOLUTION

WHEREAS; The Commission of Morgan County met on August 2, 2012 with a quorum present and passed the following resolution;

THEREFORE,
BE IT RESOLVED; This 2nd day of August 2012 that the Morgan County Commission authorizes The Honorable Stacy A. Dugan of the Morgan County Commission to act on its behalf to enter into a contractual agreement with the Division of Justice and Community Services to receive and administer grant funds pursuant to provisions of the Purdue Pharma Asset Forfeiture Funds Prescription Drug Investigations/Interventions grant program #12P-PDI-18 for $20,000.

_____
Stacy A. Dugan, President
Morgan County Commission

_____
Brenda J. Hutchinson
Morgan County Commission

_____
Bradley J. Close
Morgan County Commission

ATTEST: _____
Debra A. Kesecker
Clerk of the County Commission

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RESOLUTION

WHEREAS; The Commission of Morgan County met on August 2, 2012 with a quorum present and passed the following resolution;

THEREFORE,
BE IT RESOLVED; This 2nd day of August 2012 that the Morgan County Commission authorizes The Honorable Stacy A. Dugan of the Morgan County Commission to act on its behalf to enter into a contractual agreement with the Division of Justice and Community Services to receive and administer grant funds pursuant to provisions of the Purdue Pharma Asset Forfeiture Funds Incident Based Reporting grant program #12P-IBR-10 for $40,000.

_____
Stacy A. Dugan, President
Morgan County Commission

_____
Brenda J. Hutchinson
Morgan County Commission

_____
Bradley J. Close
Morgan County Commission

ATTEST: _____
Debra A. Kesecker
Clerk of the County Commission

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RESOLUTION

WHEREAS; The Commission of Morgan County met on August 2, 2012 with a quorum present and passed the following resolution;

THEREFORE,
BE IT RESOLVED; This 2nd day of August 2012 that the Morgan County Commission authorizes The Honorable Stacy A. Dugan of the Morgan County Commission to act on its behalf to enter into a contractual agreement with the Division of Justice and Community Services to receive and administer grant funds pursuant to provisions of the Juvenile Accountability Block Grant for the Teen Court program #11-ABG-003 for $20,000.

_____
Stacy A. Dugan, President
Morgan County Commission

_____
Brenda J. Hutchinson
Morgan County Commission

_____
Bradley J. Close
Morgan County Commission

ATTEST: _____
Debra A. Kesecker
Clerk of the County Commission

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Memorandum of Understanding

Between the Morgan County Commission and the Morgan County Partnership for the WV Division of Justice and Community Services (DJCS)
11-ABG-003 for the Teen Court Grant Program

This Memorandum of Understanding (MOU), made this 2th day of August 2012, and effective from **July 1, 2012 through June 30, 2013**, by and between the Morgan County Commission (MCC) and the Morgan County Partnership (MCP), hereby establishes that MCC and MCP agree as follows:

Section I. The Morgan County Commission will:

1. Be the fiscal agent for the MCP for the above referenced grant program;

2. Provide oversight to ensure the MCP is administering the grant program in accordance with the terms and conditions of the grant contract and in accordance with the grant program's administrative guidelines.

3. Provide fiscal management and support for the **11-ABG-003 Grant**; to include the following:
    a. Receive, review and approve invoices from the Partnership for payment by the MCC, (invoices are due on the first and third Monday of the month, and payments will be made on first and third Thursday of the month).
    b. Process invoices and make payments to designated vendors.
    c. Receive, review and approve monthly Requests for Reimbursement (draw downs).
    d. Receive draw down payments from the grant agency and reconcile to Requests for Reimbursement.
    e. Promptly advise the Partnership, the County Administrator and the county Chief Deputy Clerk budget administrator of any variance.
    f. Maintain hardcopy and electronic records of all grant activities and transactions.

4. Assist the Partnership's Executive Director in tracking of project financials;

5. Provide prompt notification and processing of grant 'De-obligation' notices to the Morgan County Partnership, the Morgan County Commission President, the Morgan County County Administrator, and the County Clerk's Office Chief Deputy Clerk;

6. At the termination of the grant contract the Grants Administrator will take appropriate action to ensure any 'de-obligated' funds are removed from the county budget system.

Section II. The Morgan County Partnership will:

1. Implement the 11-ABG-003 project as guided by the work plan;

2. Ensure the Partnership is administering the grant program in accordance with the terms and conditions of the grant contract and in accordance with the grant program's administrative guidelines;

3. Not 'Supplant' grant funds; specifically, the DJCS contract Standard Conditions and Assurances #19 states, "Grant funds must be used to supplement existing funds for program activities and may not replace (supplant) funds that have been appropriated for the same purpose....."
    a. *Supplanting exists when funds from one grant source are used pay for services and/or activities that another funding source is paying for or could pay for* either through available funds or funds that could be made available;

4. Maintain accurate detailed financial records and MS Excel spreadsheet files to ensure management of project budget in accordance with the approved award; to include awarded and matching funds;

5. Prepare and provide accurate invoices and up to date Microsoft Excel spreadsheet files of all invoices, payments, variance, and adjustment requests and approvals to the MCC Grant Administrator and County Administrator by 3:00PM on Mondays during the first and third weeks of the month;

6. Prepare required monthly financial expenditures, matching funds, and activity reports and provide to the MCC Grants Administrator and County Administrator by the fourteenth (14th) day of the following month such that the reports can be processed and received by the grant agency according to the terms of the grant contract; (**ref. contract provision #7** – ***"To be eligible for any and all payments of the grant amount, the Grantee shall submit a Request for Funds once per month to DJCS. Upon of receipt of said request, DJCS shall review the same for reasonableness and appropriateness; and if approved, will cause a warrant to be requested on that sum considered reasonable and appropriate. It is expressly understood that the total compensation shall not exceed the amount set forth in Paragraph Five hereinbefore cited and said compensation will be expended only as outlined in the budget sections of Attachment A, unless written approval of modification of the budget is signed by the parties hereto. Grantee shall submit a fiscal report detailing expenditures to DJCS by the twentieth (20th) day of each month"***);

7. Respond to all notifications of payment variance by contacting the grant agency specialist to identify and resolve reasons for variance; continually advise MCC Grant Administrator and MCC County Administrator of status;

8. Make payment of any declined invoice amount variances that cannot be rectified with the grant agency within 60 days of the initial notification;

9. Assist in the distribution of information;

10. Assist on sustainability efforts;

11. Coordinate project activities.

Section III.

1. MCC understands that items purchased using grant funds are the property of MCP and will follow the project regardless of whether MCC is the fiscal agent for future MCP grants and projects.

2. The MCP agrees to indemnify the Commission for any costs associated with variances in payment due to denied or disallowed expenditures or invoices.

In witness whereof, the parties hereto have caused this MOU to be executed as of the date listed above.

Morgan County Commission	Morgan County Partnership
By: _____ Stacy A. Dugan	By: _____ Kristin Willard
Title: _____ President	Title: _____ Executive Director
Date: _____	Date: _____

Morgan County Commission

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-COMMISSIONERS-

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RESOLUTION

WHEREAS; The Commission of Morgan County met on August 2, 2012 with a quorum present and passed the following resolution;

THEREFORE,
BE IT RESOLVED; This 2nd day of August 2012 that the Morgan County Commission authorizes The Honorable Stacy A. Dugan of the Morgan County Commission to act on its behalf to enter into a contractual agreement with the Division of Justice and Community Services to receive and administer grant funds pursuant to provisions of the Juvenile Justice and Delinquency Prevention grant program to provide a Prevention Resource Officer (PRO) at Berkeley Springs High School; grant #10-JJP-019 for $20,000.

_____
Stacy A. Dugan, President
Morgan County Commission

_____
Brenda J. Hutchinson
Morgan County Commission

_____
Bradley J. Close
Morgan County Commission

ATTEST: _____
Debra A. Kesecker
Clerk of the County Commission

Morgan County Commission

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Memorandum of Understanding

Between the Morgan County Commission, the Morgan County Sheriff' Department and the Morgan County Board of Education for the West Virginia Division of Justice and Community Services (DJCS) Title II Juvenile Justice and Delinquency Prevention grant program a Prevention Resource Officer at Berkeley Springs High School
Grant #'s: 10-JJP-019

This Memorandum of Understanding (MOU), made this **2nd day of August July 2012** and effective from **July 1, 2012 through June 30, 2013**, by and between the Morgan County Commission (MCC), the Morgan County Sheriff's Department (MCSD) and the Morgan County Board of Education (MCBoE), hereby establishes that MCC, the MCSD and the MCBoE agree as follows:

The Morgan County Commission will:

- Be the fiscal agent for the above referenced grant program;
- Provide oversight to ensure that the PRO, Deputy Barney, and the Board of Education Juvenile Crime Enforcement Coalition are administering the grant program in accordance with the terms and conditions of the grant contract and in accordance with the grant program's administrative guidelines;
- Provide fiscal management and support for the **JJDP Title II PRO Grant**; to include the following:
  - Receive, review and approve invoices from the PRO for payment by the MCC;
  - Process invoices and make payments to designated vendors;
  - Receive, review and approve monthly Requests For Reimbursement (draw downs);
  - Receive draw down payments from the grant agency and reconcile to Requests For Reimbursement;
  - Promptly advise the PRO, the County Administrator and the county Chief Deputy Clerk budget administrator of any variance;
  - Maintain hardcopy and electronic records of all grant activities and transactions;
- Assist the PRO in tracking of project financials;
- Provide prompt notification and processing of grant 'De-obligation' notices to the PRO, the Morgan County Commission President, the Morgan County County Administrator, and the County Clerk's Office Chief Deputy Clerk;
- Take appropriate follow-up action to ensure any 'de-obligated' funds are removed from the county budget system.

The Morgan County Sheriff's Department and the Morgan County Board of Education will:

- Implement the **JJDP Title II Grant** project as guided by the work plan;
- Ensure the PRO is administering the grant program in accordance with the terms and conditions of the grant contract and in accordance with the grant program's administrative guidelines;
- Not 'Supplant' grant funds; specifically, the DJCS contract Standard Conditions and Assurances #19 states, "Grant funds must be used to supplement existing funds for program activities and may not replace (supplant) funds that have been appropriated for the same purpose....."
    - *Supplanting exists when funds from one grant source are used to pay for services and/or activities that another funding source is paying for or could pay for* either through available funds or funds that could be made available;
- Maintain accurate detailed financial records to ensure management of project budget in accordance with the approved award; to include awarded and matching funds;
- Prepare and provide timely and accurate invoices to the County Clerk for all Travel, Training and Other expenses;
- Prepare required monthly financial (expenditures and matching funds) and activity reports and provide to the MCC Grant Administrator and County Administrator in a timeframe such that the reports will be received by the grant agency by the 20th of the month;
- Respond to all notifications of payment variance by contacting the grant agency specialist to identify and resolve reasons for variance; continually advise MCC Grant Administrator and MCC County Administrator of status;
- Make payment to the Morgan County Commission for any declined invoice amount variances that cannot be rectified with the grant agency within 30 days of the initial notification;
- Assist in the distribution of information;
- Assist on sustainability efforts;
- Coordinate project activities.

MCC understands that items purchased using grant funds are the property of Morgan County Sheriff's Department and the Morgan County Board of Education will follow the project regardless of whether MCC is the fiscal agent for future PRO grants and projects.

In witness whereof, the parties hereto have caused this MOU to be executed as of the date listed above.

Morgan County Commission	Morgan County Sheriff	Morgan County Board of Education
By:	By: Vincent E. Shanley	By: [illegible]
Title:	Title: Sheriff	Title: Superintendent
Date:	Date: 23 July 12	Date: 23 July 2012

PREVENTION RESOURCE OFFICER AGREEMENT
Between:

- **The Morgan County Board of Education,**
- **The Morgan County Sheriff's Department, and**
- **The Morgan County Commission**

For Fiscal Year 2012-2013 Prevention Resource Officer

This agreement made and entered into this 2nd day of August 2012 by and between the Morgan County Board of Education (hereinafter referred to as "BOARD"), the Morgan County Commission, (hereinafter referred to as "COMMISSION", and the Morgan County sheriff's Department, hereinafter referred to as "SHERIFF").

WITNESSETH

WHEREAS, the BOARD has established a Prevention Resource Officer Program (hereinafter referred to as "PRO Program"); and

WHEREAS, the COMMISSION and the SHERIFF agree for the BOARD to have a police officer serve as Prevention Resource Officer in the Morgan County School system and;

WHEREAS, the BOARD, the COMMISSION and the SHERIFF understand that the Program is established for the purpose of assistance in the prevention of juvenile delinquency through programs specifically developed to respond to those factors and conditions which give rise to delinquency; and

WHEREAS, the BOARD, the COMMISSION and the SHERIFF realize the PRO program is a great benefit to school administration, students and the community as a whole.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

SECTION 1. DUTIES AND RESPONSIBILITIES OF THE COMMISSION and SHERIFF

1.01 The COMMISSION and SHERIFF shall provide one police officer, assigned as a Prevention Resource Officer, (hereinafter referred to as "PRO") to the secondary school system operated by the BOARD.

1.02 PRO shall abide by the Morgan County Board of Education policies and procedures, as they relate to School Prevention Resource Officers. The PRO shall

consult and coordinate instructional activities through the principal. Activities conducted by the PRO, which are part of the regular instruction program of the school, shall be under the direction of the principal. The Morgan County Board of Education shall approve the content of educational programs and instructional materials used by the PRO.

1.03 The PRO will provide to students instruction in various aspects of law enforcement, public safety and education as requested and supervised by the principal and teachers.

1.04 The SHERIFF shall be responsible for the control and direction of all aspects of employment of the police officer assigned to the PRO Program.

1.05 The SHERIFF shall ensure that the exercise of the law enforcement powers by the PRO is in compliance with the authority granted by law.

1.06 The SHERIFF shall be responsible for all non-salary expenses (excluding benefits billed to the Board of Education) related to the PRO position; to include Travel, Training, Gasoline, Equipment, Uniforms, Office Space, Telephone, Supplies, Vehicle and Vehicle Maintenance.

Travel, Training and Other Expenses are estimated based on 2011-2012 actual expenditures of $4,812.95 plus an additional $187.05 for anticipated increase in costs	
Travel & Training (gasoline, meals while traveling, hotel)	4,200.00
Other (Auto maintenance, service, tires, inspection)	800.00

1.07 The SHERIFF and the COMMISSION shall hold harmless the BOARD for any injuries suffered by the Prevention Resource Officer arising under their employment with the PRO Program.

1.08 The PRO shall not function as a school disciplinarian, or safety officer. It is not the responsibility of the PRO to intervene with the normal disciplinary actions of the school system or be used as a witness to disciplinary procedures in the school. The PRO will, at all times, be expected to act within the scope of authority granted by law. The PRO will perform duties according to the following:

a. Perform law enforcement functions within the school setting.

b. Identify and prevent, through counseling and referral, delinquent behavior, including substance abuse.

c. Foster a better understanding of the law enforcement function.

d. Develop a better appreciation of citizen's rights, obligations and responsibilities.

e. Provide information about crime prevention.

f. Provide assistance and support for crime victims identified within the school setting.

g. Promote positive relations between students and law enforcement officers.

h. Enhance knowledge of the fundamental concept and structure of law.

i. Be familiar with confidentiality requirements.

1.09 The police officer may not be changed during the course of the agreement by the COMMISSION and the SHERIFF unless the substitute officer has received the required training. The PRO shall be on duty at the school during regular school hours when students are required to attend and when the required PRO training programs are conducted, unless a police department emergency arises or law enforcement requirements prohibit such duty assignment.

1.09 The PRO shall not be required to attend extracurricular activities, which are held beyond his/her regular workday nor require the PRO to leave his/her jurisdiction, but the PRO shall have the option if they choose to do so.

SECTION 2. DUTIES AND RESPONSIBILITIES OF BOARD

2.01 The principal at the designated school shall be the on-site contact person for the PRO. The Superintendent shall designate the Prevention Resource Officer Coordinator to serve as the county liaison for the program.

2.02 Payments to the COMMISSION from the BOARD shall be made in twelve monthly installments upon submission of monthly invoices by the COMMISSION and certification by the principal or his/her designee that the services rendered were satisfactory. The monthly payments shall be based on a rate of $36,545.60 annually salary expense plus benefits[1], less $20,000[2] in awarded grant funding and shall be made within 30 days of receipt of the invoice (ref. attached award document).

Salary	36,545.60
Insurance	8,793.00
Retirement	4,751.00
Social Security	2,795.00
Worker's Comp	1,085.39
Total Expense	53,969.99
Less Grant Funding	-20,000.00
Balance Payable by the BOARD	33,969.99
Estimated Monthly BOARD Payment Due	2,830.83

[1] *Salary and benefits expense amounts for FY2012-2013 were determined by the MCC Deputy Clerk, Cathy Payne- 7/12/2012.*

[2] *Per WV DJCS Title II FY2012 grant award#**10-JJP-019***

SECTION 3. TERM OF AGREEMENT

3.01 This agreement shall be made for a 12-month term beginning the 1st day of July 2012, through the 30th day of June 2013.

3.02 This agreement shall continue in effect until the duration of the term as described in paragraph 3.01 or until terminated by either of the parties in accordance with the term listed in section four below.

SECTION 4. TERMINATION

4.01 Either party may terminate this agreement by serving written notice upon the other party at least thirty (30) days in advance of such termination.

SECTION 5. INVALID PROVISION

5.01 Should any part of this Agreement be declared invalid by a court of law, such decision shall not affect the validity of any remaining portion which shall remain in full force and effect as if the invalid portion was never a part of this Agreement materially affect any other rights or obligations of the parties hereunder, the parties hereto will negotiate in good faith to amend this Agreement in a manner satisfactory to the parties.

SECTION 6. INDEMNIFICATION

6.01 The BOARD agrees to indemnify and save harmless the COMMISSION and the SHERIFF for any liability whatsoever arising out of the negligent acts of the Board's employees or agents in directing the PRO in the performance of their instructional programs. The COMMISSION agrees to indemnity and save harmless the BOARD of any liability whatsoever arising to employment as defined by City Ordinances and West Virginia State Law. Nothing in this Agreement shall be construed to affect in any way the BOARD or the COMMISSION'S rights, privileges, and immunities.

6.02 The BOARD agrees to indemnify the COMMISSION and the SHERIFF for any costs associated with the elimination of this position should the BOARD no longer wish to employ a PRO at the end of the term of this agreement. The BOARD understands that the SHERIFF and the COMMISSION have created a new position in the Sheriff's Department at the BOARD's request and for their benefit; therefore, any costs associated with the termination of this position at the end of this contract, including but not limited to unemployment compensation expenses, shall be reimbursed to the COMMISSION by the BOARD. Furthermore, should the COMMISSION and/or the SHERIFF be prohibited by law from eliminating this position from the Sheriff's Department, the BOARD agrees to indemnify the COMMISSION and the SHERIFF for the continuing costs associated with salary and benefits of the position until such time as the position can be lawfully eliminated.

SECTION 7. ASSIGNMENT

7.01 Neither party to the Agreement shall, directly or indirectly, assign or purport to assign this Agreement or any of its rights or obligations in whole or in part to any third party without the prior written consent of the other party.

SECTION 8. NO WAIVER

8.01 The failure of either party to enforce at any time any of the provisions, rights, or elections or in any way effect the validity of this Agreement. The failure to exercise by either party any of its rights herein contained shall not preclude or prejudice it from exercising the same or any other right it may have under this Agreement, irrespective of any previous action or proceeding taken by it hereunder.

SECTION 9. COMPLETE AGREEMENT

9.01 This Agreement is the complete Agreement of the parties; may be amended or modified only in writing; and supersedes, cancels, and terminates any and all prior agreements or understandings of the parties, whether written or oral, concerning the subject matter hereof.

SECTION 10. CHOICE OF LAW

10.01 This Agreement shall be governed by and construed and interpreted according to the laws of the State of West Virginia. It shall be binding upon and insure to the benefit of the successors of the BOARD, the COMMISSION and the SHERIFF.

SECTION 11. NOTICES

11.01 All notices or other communications required or permitted by this Agreement shall be in writing and deemed effectively delivered upon mailing by certified mail, return receipt requested, or delivered personally to the following persons and addresses unless otherwise specified herein:

Superintendent 23 July 2012

Morgan County Board of Education (Signature & Title of Board Officer) Date

Morgan County Commission (Signature & Title of Commission Officer) Date

Sheriff of Morgan Co. WV 23 July 12

Morgan County Sheriff (Signature & Title of Sheriff) Date

State of West Virginia
Earl Ray Tomblin
Governor

Office of the Governor
State Capitol
1900 Kanawha Boulevard, East
Charleston, WV 25305

Telephone: (304) 558-2000
Toll Free: 1-888-438-2731
FAX: (304) 342-7025
www.wvgov.org

June 22, 2012

The Honorable Stacy Dugan
President
Morgan County Commission
77 North Fairfax Street
Berkeley Springs, West Virginia 25411

Dear Commissioner Dugan:

I am pleased to inform you that I have approved a Juvenile Justice and Delinquency Prevention (JJDP) Title II grant award to the Morgan County Commission in the amount of $20,000. These funds will be utilized to provide a Prevention Resource Officer (PRO) at Berkeley County High School.

Please let me know if our Division of Justice and Community Services' staff or I can be of further assistance.

Sincerely,

Earl Ray Tomblin
Governor

ERT/amw

Mark Miller has sat off the fire board for 1 yr and is due for re-appointment after July 1, 2012

Morgan County Commission

77 Fairfax Street, Room 101
Berkeley Springs, West Virginia 25411
304-258-8540

-COMMISSIONERS-

BRENDA J. HUTCHINSON
5154 MILO SCHOOL ROAD
GREAT CACAPON
WV 25422
304-947-7713

STACY A. DUGAN
401 S. LAUREL AVENUE
BERKELEY SPRINGS
WV 25411
304-258-9648

BRADLEY J. CLOSE
380 DRY RUN ROAD
BERKELEY SPRINGS
WV 25411
304-258-3795

August 2, 2012

COURT ORDER

The Morgan County Commission hereby appoints **Mark Miller** to the **MORGAN COUNTY FIRE BOARD** to serve a three year term.

This appointment is effective immediately and will expire June 30, 2015.

_____
Stacy A. Dugan, President
Morgan County Commission

_____
Brenda J. Hutchinson
Morgan County Commission

_____
Bradley J. Close
Morgan County Commission

ATTEST: _____
Debra Kesecker
Clerk of the County Commission

MORGAN COUNTY COMMISSION
AGENDA REQUEST

DATE OF REQUEST: 7/26/12

NAME: Dave McDonald

ADDRESS: 77 Fairfax St., Rm 101
Berkeley Springs, WV

HOME PHONE:

BUSINESS PHONE:
304-258-8540

DATE OF MEETING REQUESTED: 8/02/2012

TOPIC (S) OF DISCUSSION:
Demonstration of Maintenance Ticket Data Base

SPECIAL EQUIPMENT NEEDS (i.e. Powerpoint, etc.)

* Please include any handouts or material that will be discussed or presented to the County Commission. Thank you !

MORGAN COUNTY COMMISSION
AGENDA REQUEST

DATE OF REQUEST: 7/26/12

NAME: Vince Shambaugh

ADDRESS: 111 Fairfax St.,
Berkeley Springs, WV

HOME PHONE:

BUSINESS PHONE:
304-258-1067

DATE OF MEETING REQUESTED: 8/02/2012

TOPIC (S) OF DISCUSSION:
Courthouse Issues with security

SPECIAL EQUIPMENT NEEDS (i.e. Powerpoint, etc.)

* Please include any handouts or material that will be discussed or presented to the County Commission. Thank you !

MORGAN COUNTY COMMISSION
AGENDA REQUEST

DATE OF REQUEST: 7/26/12

NAME: Debra Kesecker, County Clerk

ADDRESS: 77 Fairfax St., Rm 102
Berkeley Springs, WV

HOME PHONE:

BUSINESS PHONE:
304-258-8547

DATE OF MEETING REQUESTED: 8/02/2012

TOPIC (S) OF DISCUSSION:
Taxable Employee Benefits

SPECIAL EQUIPMENT NEEDS (i.e. Powerpoint, etc.)

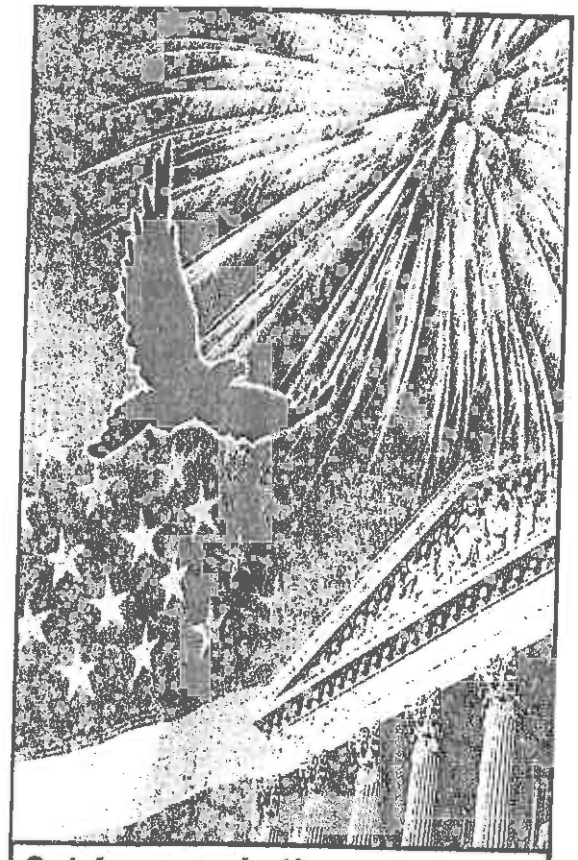
* Please include any handouts or material that will be discussed or presented to the County Commission. Thank you !

Department of the Treasury
Internal Revenue Service

Publication 15-B
Cat. No. 29744N

Employer's Tax Guide to Fringe Benefits

For use in **2012**



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Dec 07, 2011

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What's New

Future developments. The IRS has created a page on IRS.gov for information about Publication 15-B, at *www.irs.gov/pub15b*. Information about any future developments affecting Publication 15-B (such as legislation enacted after we release it) will be posted on that page.

Employer-provided cell phones. The value of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an

employee's income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a de minimis fringe benefit. For details, see *Employer-Provided Cell Phones*, De Minimis *(Minimal) Benefits*, and *Working Condition Benefits*, in section 2.

Cents-per-mile rule. The business mileage rate for 2012 is 55.5 cents per mile. You may use this rate to reimburse an employee for business use of a personal vehicle, and under certain conditions, you may use the rate under the cents-per-mile rule to value the personal use of a vehicle you provide to an employee. See *Cents-Per-Mile Rule* in section 3.

Qualified parking exclusion and commuter transportation benefit. For 2012, the monthly exclusion for qualified parking is $240 and the monthly exclusion for commuter highway vehicle transportation and transit passes is $125. See *Qualified Transportation Benefits* in section 2.

Reminders

Expiration of benefits for volunteer firefighters and emergency medical responders. The gross income exclusion for benefits provided to volunteer firefighters and emergency medical responders expired on December 31, 2010.

Simple cafeteria plans. The Patient Protection and Affordable Care Act amended code section 125 to allow eligible employers' cafeteria plans to qualify as simple cafeteria plans. Simple cafeteria plans as described in section 1 will be treated as meeting certain nondiscrimination requirements.

Photographs of missing children. The Internal Revenue Service is a proud partner with the National Center for Missing and Exploited Children. Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

Introduction

This publication supplements Publication 15 (Circular E), Employer's Tax Guide, and Publication 15-A, Employer's Supplemental Tax Guide. It contains information for employers on the employment tax treatment of fringe benefits.

Comments and suggestions. We welcome your comments about this publication and your suggestions for future editions.

You can write to us at the following address:

Internal Revenue Service
Business Forms and Publications Branch
SE:W:CAR:MP:T:B
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

We respond to many letters by telephone. Therefore, it would be helpful if you would include your daytime phone number, including the area code, in your correspondence.

You can email us at *taxforms@irs.gov*. Please put "Publication 15-B" on the subject line. Although we cannot respond individually to each email, we do appreciate your feedback and will consider your comments as we revise our tax products.

1. Fringe Benefit Overview

A fringe benefit is a form of pay for the performance of services. For example, you provide an employee with a fringe benefit when you allow the employee to use a business vehicle to commute to and from work.

Performance of services. A person who performs services for you does not have to be your employee. A person may perform services for you as an independent contractor, partner, or director. Also, for fringe benefit purposes, treat a person who agrees not to perform services (such as under a covenant not to compete) as performing services.

Provider of benefit. You are the provider of a fringe benefit if it is provided for services performed for you. You are the provider of a fringe benefit even if your client or customer provides the benefit to your employee for services the employee performs for you. For example, you are the provider of a fringe benefit for day care even if the day care is provided by a third party.

Recipient of benefit. The person who performs services for you is the recipient of a fringe benefit provided for those services. That person may be the recipient even if the benefit is provided to someone who did not perform services for you. For example, your employee may be the recipient of a fringe benefit you provide to a member of the employee's family.

Are Fringe Benefits Taxable?

Any fringe benefit you provide is taxable and must be included in the recipient's pay unless the law specifically excludes it. Section 2 discusses the exclusions that apply

to certain fringe benefits. Any benefit not excluded under the rules discussed in section 2 is taxable.

Including taxable benefits in pay. You must include in a recipient's pay the amount by which the value of a fringe benefit is more than the sum of the following amounts.

- Any amount the law excludes from pay.
- Any amount the recipient paid for the benefit.

The rules used to determine the value of a fringe benefit are discussed in section 3.

If the recipient of a taxable fringe benefit is your employee, the benefit is subject to employment taxes and must be reported on Form W-2, Wage and Tax Statement. However, you can use special rules to withhold, deposit, and report the employment taxes. These rules are discussed in section 4.

If the recipient of a taxable fringe benefit is not your employee, the benefit is not subject to employment taxes. However, you may have to report the benefit on one of the following information returns.

If the recipient receives the benefit as:	Use:
An independent contractor	Form 1099-MISC, Miscellaneous Income
A partner	Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc.

For more information, see the instructions for the forms listed above.

Cafeteria Plans

A cafeteria plan, including a flexible spending arrangement, is a written plan that allows your employees to choose between receiving cash or taxable benefits instead of certain qualified benefits for which the law provides an exclusion from wages. If an employee chooses to receive a qualified benefit under the plan, the fact that the employee could have received cash or a taxable benefit instead will not make the qualified benefit taxable.

Generally, a cafeteria plan does not include any plan that offers a benefit that defers pay. However, a cafeteria plan can include a qualified 401(k) plan as a benefit. Also, certain life insurance plans maintained by educational institutions can be offered as a benefit even though they defer pay.

Qualified benefits. A cafeteria plan can include the following benefits discussed in section 2.

- Accident and health benefits (but not Archer medical savings accounts (Archer MSAs) or long-term care insurance).
- Adoption assistance.
- Dependent care assistance.
- Group-term life insurance coverage (including costs that cannot be excluded from wages).
- Health savings accounts (HSAs). **Distributions** from an HSA may be used to pay eligible long-term care insurance premiums or qualified long-term care services.

Benefits not allowed. A cafeteria plan **cannot** include the following benefits discussed in section 2.

- Archer MSAs. See *Accident and Health Benefits* in section 2.
- Athletic facilities.
- *De minimis* (minimal) benefits.
- Educational assistance.
- Employee discounts.
- Employer-provided cell phones.
- Lodging on your business premises.
- Meals.
- Moving expense reimbursements.
- No-additional-cost services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

It also cannot include scholarships or fellowships (discussed in Publication 970, Tax Benefits for Education).

Employee. For these plans, treat the following individuals as employees.

- A current common-law employee. See section 2 in Publication 15 (Circular E) for more information.
- A full-time life insurance agent who is a current statutory employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder for this purpose is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the

benefit as a reduction in distributions to the 2% shareholder.

Plans that favor highly compensated employees. If your plan favors highly compensated employees as to eligibility to participate, contributions, or benefits, you must include in their wages the value of taxable benefits they could have selected. A plan you maintain under a collective bargaining agreement does not favor highly compensated employees.

A highly compensated employee for this purpose is any of the following employees.

1. An officer.
2. A shareholder who owns more than 5% of the voting power or value of all classes of the employer's stock.
3. An employee who is highly compensated based on the facts and circumstances.
4. A spouse or dependent of a person described in (1), (2), or (3).

Plans that favor key employees. If your plan favors key employees, you must include in their wages the value of taxable benefits they could have selected. A plan favors key employees if more than 25% of the total of the nontaxable benefits you provide for all employees under the plan go to key employees. However, a plan you maintain under a collective bargaining agreement does not favor key employees.

A key employee during 2012 is generally an employee who is either of the following.

1. An officer having annual pay of more than $165,000.
2. An employee who for 2012 is either of the following.
   a. A 5% owner of your business.
   b. A 1% owner of your business whose annual pay was more than $150,000.

Simple Cafeteria Plans

After December 31, 2010, eligible employers meeting contribution requirements and eligibility and participation requirements can establish a simple cafeteria plan. Simple cafeteria plans are treated as meeting the nondiscrimination requirements of a cafeteria plan and certain benefits under a cafeteria plan.

Eligible employer. You are an eligible employer if you employ an average of 100 or fewer employees during either of the 2 preceding years. If your business was not in existence throughout the preceding year, you are eligible if you reasonably expect to employ an average of 100 or fewer employees in the current year. If you establish a simple cafeteria plan in a year that you employ an average of 100 or fewer employees, you are considered an eligible employer for any subsequent year as long as you do not employ an average of 200 or more employees in a subsequent year.

Eligibility and participation requirements. These requirements are met if all employees who had at least 1,000 hours of service for the preceding plan year are eligible to participate and each employee eligible to participate in the plan may elect any benefit available under the plan. You may elect to exclude from the plan employees who:

1. Are under age 21 before the close of the plan year,
2. Have less than 1 year of service with you as of any day during the plan year,
3. Are covered under a collective bargaining agreement, or
4. Are nonresident aliens working outside the United States whose income did not come from a U.S. source.

Contribution requirements. You must make a contribution to provide qualified benefits on behalf of each qualified employee in an amount equal to:

1. A uniform percentage (not less than 2%) of the employee's compensation for the plan year, or
2. An amount which is at least 6% of the employee's compensation for the plan year or twice the amount of the salary reduction contributions of each qualified employee, whichever is less.

If the contribution requirements are met using option (2) above, the rate of contribution to any salary reduction contribution of a highly compensated or key employee can not be greater than the rate of contribution to any other employee.

More information. For more information about cafeteria plans, see section 125 of the Internal Revenue Code and its regulations.

2. Fringe Benefit Exclusion Rules

This section discusses the exclusion rules that apply to fringe benefits. These rules exclude all or part of the value of certain benefits from the recipient's pay.

The excluded benefits are not subject to federal income tax withholding. Also, in most cases, they are not subject to social security, Medicare, or federal unemployment (FUTA) tax and are not reported on Form W-2.

This section discusses the exclusion rules for the following fringe benefits.

- Accident and health benefits.
- Achievement awards.
- Adoption assistance.
- Athletic facilities.
- *De minimis* (minimal) benefits.
- Dependent care assistance.
- Educational assistance.
- Employee discounts.
- Employee stock options.
- Employer-provided cell phones.
- Group-term life insurance coverage.
- Health savings accounts (HSAs).
- Lodging on your business premises.
- Meals.
- Moving expense reimbursements.
- No-additional-cost services.
- Retirement planning services.
- Transportation (commuting) benefits.
- Tuition reduction.
- Working condition benefits.

See Table 2-1, next, for an overview of the employment tax treatment of these benefits.

Table 2-1. Special Rules for Various Types of Fringe Benefits
(For more information, see the full discussion in this section.)

Treatment Under Employment Taxes			
Type of Fringe Benefit	**Income Tax Withholding**	**Social Security and Medicare**	**Federal Unemployment (FUTA)**
Accident and health benefits	Exempt[1,2], except for long-term care benefits provided through a flexible spending or similar arrangement.	Exempt, except for certain payments to S corporation employees who are 2% shareholders.	Exempt
Achievement awards	Exempt[1] up to $1,600 for qualified plan awards ($400 for nonqualified awards).		
Adoption assistance	Exempt[1,3]	Taxable	Taxable
Athletic facilities	Exempt if substantially all use during the calendar year is by employees, their spouses, and their dependent children and the facility is operated by the employer on premises owned or leased by the employer.		
De minimis (minimal) benefits	Exempt	Exempt	Exempt
Dependent care assistance	Exempt[3] up to certain limits, $5,000 ($2,500 for married employee filing separate return).		
Educational assistance	Exempt up to $5,250 of benefits each year. (See *Educational Assistance*, later in this section.)		
Employee discounts	Exempt[3] up to certain limits. (See *Employee Discounts*, later in this section.)		
Employee stock options	See *Employee Stock Options*, later in this section.		
Employer-provided cell phones	Exempt if provided primarily for noncompensatory business purposes.		
Group-term life insurance coverage	Exempt	Exempt[1,4,7] up to cost of $50,000 of coverage. (Special rules apply to former employees.)	Exempt
Health savings accounts (HSAs)	Exempt for qualified individuals up to the HSA contribution limits. (See *Health Savings Accounts*, later in this section.)		
Lodging on your business premises	Exempt[1] if furnished for your convenience as a condition of employment.		
Meals	Exempt if furnished on your business premises for your convenience.		
	Exempt if *de minimis*.		
Moving expense reimbursements	Exempt[1] if expenses would be deductible if the employee had paid them.		
No-additional-cost services	Exempt[3]	Exempt[3]	Exempt[3]
Retirement planning services	Exempt[5]	Exempt[5]	Exempt[5]
Transportation (commuting) benefits	Exempt[1] up to certain limits if for rides in a commuter highway vehicle and/or transit passes ($125), qualified parking ($240), or qualified bicycle commuting reimbursement[6] ($20). (See *Transportation (Commuting) Benefits*, later in this section.)		
	Exempt if *de minimis*.		
Tuition reduction	Exempt[3] if for undergraduate education (or graduate education if the employee performs teaching or research activities).		
Working condition benefits	Exempt	Exempt	Exempt

[1] Exemption does not apply to S corporation employees who are 2% shareholders.
[2] Exemption does not apply to certain highly compensated employees under a self-insured plan that favors those employees.
[3] Exemption does not apply to certain highly compensated employees under a program that favors those employees.
[4] Exemption does not apply to certain key employees under a plan that favors those employees.
[5] Exemption does not apply to services for tax preparation, accounting, legal, or brokerage services.
[6] If the employee receives a qualified bicycle commuting reimbursement in a qualified bicycle commuting month, the employee cannot receive commuter highway vehicle, transit pass, or qualified parking benefits in that same month.
[7] You must include in your employee's wages the cost of group-term life insurance beyond $50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

Accident and Health Benefits

This exclusion applies to contributions you make to an accident or health plan for an employee, including the following.

- Contributions to the cost of accident or health insurance including qualified long-term care insurance.
- Contributions to a separate trust or fund that directly or through insurance provides accident or health benefits.
- Contributions to Archer MSAs or health savings accounts (discussed in Publication 969, Health Savings Accounts and Other Tax-Favored Health Plans).

This exclusion also applies to payments you directly or indirectly make to an employee under an accident or health plan for employees that are either of the following.

- Payments or reimbursements of medical expenses.
- Payments for specific injuries or illnesses (such as the loss of the use of an arm or leg). The payments must be figured without regard to any period of absence from work.

Accident or health plan. This is an arrangement that provides benefits for your employees, their spouses, their dependents, and their children (under age 27) in the event of personal injury or sickness. The plan may be insured or noninsured and does not need to be in writing.

Employee. For this exclusion, treat the following individuals as employees.

- A current common-law employee.
- A full-time life insurance agent who is a current statutory employee.
- A retired employee.
- A former employee you maintain coverage for based on the employment relationship.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a retired employee.
- For the exclusion of contributions to an accident or health plan, a leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Special rule for certain government plans. For certain government accident and health plans, payments to a deceased plan participant's beneficiary may qualify for the exclusion from gross income if the other requirements for exclusion are met. See section 105(j) for details.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Exclusion from wages. You can generally exclude the value of accident or health benefits you provide to an employee from the employee's wages.

Exception for certain long-term care benefits. You cannot exclude contributions to the cost of long-term care insurance from an employee's wages subject to federal income tax withholding if the coverage is provided through a flexible spending or similar arrangement. This is a benefit program that reimburses specified expenses up to a maximum amount that is reasonably available to the employee and is less than five times the total cost of the insurance. However, you can exclude these contributions from the employee's wages subject to social security, Medicare, and federal unemployment (FUTA) taxes.

S corporation shareholders. Because you cannot treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the value of accident or health benefits you provide to the employee in the employee's wages subject to federal income tax withholding. However, you can exclude the value of these benefits (other than payments for specific injuries or illnesses) from the employee's wages subject to social security, Medicare, and FUTA taxes.

Exception for highly compensated employees. If your plan is a self-insured medical reimbursement plan that favors highly compensated employees, you must include all or part of the amounts you pay to these employees in their wages subject to federal income tax withholding. However, you can exclude these amounts (other than payments for specific injuries or illnesses) from the employee's wages subject to social security, Medicare, and FUTA taxes.

A self-insured plan is a plan that reimburses your employees for medical expenses not covered by an accident or health insurance policy.

A highly compensated employee for this exception is any of the following individuals.

- One of the five highest paid officers.
- An employee who owns (directly or indirectly) more than 10% in value of the employer's stock.

- An employee who is among the highest paid 25% of all employees (other than those who can be excluded from the plan).

For more information on this exception, see section 105(h) of the Internal Revenue Code and its regulations.

COBRA premiums. The exclusion for accident and health benefits applies to amounts you pay to maintain medical coverage for a current or former employee under the Combined Omnibus Budget Reconciliation Act of 1986 (COBRA). The exclusion applies regardless of the length of employment, whether you directly pay the premiums or reimburse the former employee for premiums paid, and whether the employee's separation is permanent or temporary.

Achievement Awards

This exclusion applies to the value of any tangible personal property you give to an employee as an award for either length of service or safety achievement. The exclusion does not apply to awards of cash, cash equivalents, gift certificates, or other intangible property such as vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, and other securities. The award must meet the requirements for employee achievement awards discussed in chapter 2 of Publication 535, Business Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former common-law employee you maintain coverage for in consideration of or based on an agreement relating to prior service as an employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Exclusion from wages. You can generally exclude the value of achievement awards you give to an employee from the employee's wages if their cost is not more than the amount you can deduct as a business expense for the year. The excludable annual amount is $1,600 ($400 for awards that are not "qualified plan awards"). See chapter 2 of Publication 535 for more information about the limit on deductions for employee achievement awards.

CAUTION *To determine for 2012 whether an achievement award is a "qualified plan award" under the deduction rules described in Publication 535, treat any employee who received more than $115,000 in pay for 2011 as a highly compensated employee.*

If the cost of awards given to an employee is more than your allowable deduction, include in the employee's wages the larger of the following amounts.

- The part of the cost that is more than your allowable deduction (up to the value of the awards).
- The amount by which the value of the awards exceeds your allowable deduction.

Exclude the remaining value of the awards from the employee's wages.

Adoption Assistance

An adoption assistance program is a separate written plan of an employer that meets all of the following requirements.

1. It benefits employees who qualify under rules set up by you, which do not favor highly compensated employees or their dependents. To determine whether your plan meets this test, do not consider employees excluded from your plan who are covered by a collective bargaining agreement, if there is evidence that adoption assistance was a subject of good-faith bargaining.
2. It does not pay more than 5% of its payments during the year for shareholders or owners (or their spouses or dependents). A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
3. You give reasonable notice of the plan to eligible employees.
4. Employees provide reasonable substantiation that payments or reimbursements are for qualifying expenses.

For this exclusion, a highly compensated employee for 2012 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

You must exclude all payments or reimbursements you make under an adoption assistance program for an employee's qualified adoption expenses from the employee's wages subject to federal income tax withholding. However, you cannot exclude these payments from wages subject to social security, Medicare, and federal unemployment (FUTA) taxes. For more information, see the Instructions for Form 8839, Qualified Adoption Expenses.

You must report all qualifying adoption expenses you paid or reimbursed under your adoption assistance program for each employee for the year in box 12 of the employee's Form W-2. Use code "T" to identify this amount.

Exception for S corporation shareholders. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, including using the benefit as a reduction in distributions to the 2% shareholder.

Athletic Facilities

You can exclude the value of an employee's use of an on-premises gym or other athletic facility you operate from an employee's wages if substantially all use of the facility during the calendar year is by your employees, their spouses, and their dependent children. For this purpose, an employee's dependent child is a child or stepchild who is the employee's dependent or who, if both parents are deceased, has not attained the age of 25.

On-premises facility. The athletic facility must be located on premises you own or lease. It does not have to be located on your business premises. However, the exclusion does not apply to an athletic facility for residential use, such as athletic facilities that are part of a resort.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of a former employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

De Minimis (Minimal) Benefits

You can exclude the value of a *de minimis* benefit you provide to an employee from the employee's wages. A *de minimis* benefit is any property or service you provide to an employee that has so little value (taking into account how frequently you provide similar benefits to your employees) that accounting for it would be unreasonable or administratively impracticable. Cash and cash equivalent fringe benefits (for example, use of gift card, charge card, or credit card), no matter how little, are never excludable as a *de minimis* benefit, except for occasional meal money or transportation fare.

Examples of *de minimis* benefits include the following.

- Personal use of an employer-provided cell phone provided primarily for noncompensatory business purposes. See *Employer-Provided Cell Phones*, later in this section, for details.
- Occasional personal use of a company copying machine if you sufficiently control its use so that at least 85% of its use is for business purposes.
- Holiday gifts, other than cash, with a low fair market value.
- Group-term life insurance payable on the death of an employee's spouse or dependent if the face amount is not more than $2,000.
- Meals. See *Meals*, later in this section, for details.
- Occasional parties or picnics for employees and their guests.
- Occasional tickets for theater or sporting events.
- Transportation fare. See *Transportation (Commuting) Benefits*, later in this section, for details.

Employee. For this exclusion, treat any recipient of a *de minimis* benefit as an employee.

Dependent Care Assistance

This exclusion applies to household and dependent care services you directly or indirectly pay for or provide to an employee under a dependent care assistance program that covers only your employees. The services must be for a qualifying person's care and must be provided to allow the employee to work. These requirements are basically the same as the tests the employee would have to meet to claim the dependent care credit if the employee paid for the services. For more information, see *Qualifying Person Test* and *Work-Related Expense Test* in Publication 503, Child and Dependent Care Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you are a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude the value of benefits you provide to an employee under a dependent care assistance program from the employee's wages if you reasonably believe that the employee can exclude the benefits from gross income.

An employee can generally exclude from gross income up to $5,000 of benefits received under a dependent care assistance program each year. This limit is reduced to $2,500 for married employees filing separate returns.

However, the exclusion cannot be more than the smaller of the earned income of either the employee or employee's spouse. Special rules apply to determine the earned income of a spouse who is either a student or not able to care for himself or herself. For more information on the earned income limit, see Publication 503.

Exception for highly compensated employees. You cannot exclude dependent care assistance from the wages of a highly compensated employee unless the benefits provided under the program do not favor highly compensated employees and the program meets the requirements described in section 129(d) of the Internal Revenue Code.

For this exclusion, a highly compensated employee for 2012 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Form W-2. Report the value of all dependent care assistance you provide to an employee under a dependent care assistance program in box 10 of the employee's Form W-2. Include any amounts you cannot exclude from the employee's wages in boxes 1, 3, and 5. Report both the nontaxable portion of assistance (up to $5,000) and any assistance above the amount that is non-taxable to the employee.

Example. Company A provides a dependent care assistance flexible spending arrangement to its employees through a cafeteria plan. In addition, it provides occasional on-site dependent care to its employees at no cost. Emily, an employee of company A, had $4,500 deducted from her pay for the dependent care flexible spending arrangement. In addition, Emily used the on-site dependent care several times. The fair market value of the on-site care was $700. Emily's Form W-2 should report $5,200 of dependent care assistance in Box 10 ($4,500 flexible spending arrangement plus $700 on-site dependent care.) Boxes 1, 3, and 5 should include $200 (the amount in excess of the nontaxable assistance), and applicable taxes should be withheld on that amount.

Educational Assistance

This exclusion applies to educational assistance you provide to employees under an educational assistance program. The exclusion also applies to graduate level courses.

Educational assistance means amounts you pay or incur for your employees' education expenses. These expenses generally include the cost of books, equipment, fees, supplies, and tuition. However, these expenses do not include the cost of a course or other education involving sports, games, or hobbies, unless the education:

- Has a reasonable relationship to your business, or
- Is required as part of a degree program.

Education expenses do not include the cost of tools or supplies (other than textbooks) your employee is allowed to keep at the end of the course. Nor do they include the cost of lodging, meals, or transportation.

Educational assistance program. An educational assistance program is a separate written plan that provides educational assistance only to your employees. The program qualifies only if all of the following tests are met.

- The program benefits employees who qualify under rules set up by you that do not favor highly compensated employees. To determine whether your program meets this test, do not consider employees excluded from your program who are covered by a collective bargaining agreement if there is evidence that educational assistance was a subject of good-faith bargaining.
- The program does not provide more than 5% of its benefits during the year for shareholders or owners. A shareholder or owner is someone who owns (on any day of the year) more than 5% of the stock or of the capital or profits interest of your business.
- The program does not allow employees to choose to receive cash or other benefits that must be included in gross income instead of educational assistance.

- You give reasonable notice of the program to eligible employees.

Your program can cover former employees if their employment is the reason for the coverage.

For this exclusion, a highly compensated employee for 2012 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired, left on disability, or was laid off.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- Yourself (if you are a sole proprietor).
- A partner who performs services for a partnership.

Exclusion from wages. You can exclude up to $5,250 of educational assistance you provide to an employee under an educational assistance program from the employee's wages each year.

Assistance over $5,250. If you do not have an educational assistance plan, or you provide an employee with assistance exceeding $5,250, you can exclude the value of these benefits from wages if they are working condition benefits. Property or a service provided is a working condition benefit to the extent that if the employee paid for it, the amount paid would have been deductible as a business or depreciation expense. See *Working Condition Benefits*, later in this section.

Employee Discounts

This exclusion applies to a price reduction you give an employee on property or services you offer to customers in the ordinary course of the line of business in which the employee performs substantial services. However, it does not apply to discounts on real property or discounts on personal property of a kind commonly held for investment (such as stocks or bonds).

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A former employee who retired or left on disability.
- A widow or widower of an individual who died while an employee.
- A widow or widower of an employee who retired or left on disability.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
- A partner who performs services for a partnership.

Exclusion from wages. You can generally exclude the value of an employee discount you provide an employee from the employee's wages, up to the following limits.

- For a discount on services, 20% of the price you charge nonemployee customers for the service.
- For a discount on merchandise or other property, your gross profit percentage times the price you charge nonemployee customers for the property.

Determine your gross profit percentage in the line of business based on all property you offer to customers (including employee customers) and your experience during the tax year immediately before the tax year in which the discount is available. To figure your gross profit percentage, subtract the total cost of the property from the total sales price of the property and divide the result by the total sales price of the property.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee any part of the value of a discount that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2012 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Employee Stock Options

There are three kinds of stock options—incentive stock options, employee stock purchase plan options, and nonstatutory (nonqualified) stock options.

Wages for social security, Medicare, and federal unemployment taxes (FUTA) do not include remuneration resulting from the exercise, after October 22, 2004, of an incentive stock option or under an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option. The IRS will not apply these taxes to an exercise before October 23, 2004, of an incentive stock option or an employee stock purchase plan option or to a disposition of stock acquired by such exercise.

Additionally, federal income tax withholding is not required on the income resulting from a disqualifying disposition of stock acquired by the exercise after October 22, 2004, of an incentive stock option or under an employee stock purchase plan option, or on income equal to the discount portion of stock acquired by the exercise, after October 22, 2004, of an employee stock purchase plan option resulting from any disposition of the stock. The IRS will not apply federal income tax withholding upon the disposition of stock acquired by the exercise, before October 23, 2004, of an incentive stock option or an employee stock purchase plan option. However, the employer must report as income in box 1 of Form W-2, (a) the discount portion of stock acquired by the exercise of an employee stock purchase plan option upon disposition of the stock, and (b) the spread (between the exercise price and the fair market value of the stock at the time of exercise) upon a disqualifying disposition of stock acquired by the exercise of an incentive stock option or an employee stock purchase plan option.

An employer must report the excess of the fair market value of stock received upon exercise of a nonstatutory stock option over the amount paid for the stock option on Form W-2 in boxes 1, 3 (up to the social security wage base), 5, and in box 12 using the code "V." See Regulations section 1.83-7.

An employee who transfers his or her interest in nonstatutory stock options to the employee's former spouse incident to a divorce is not required to include an amount in gross income upon the transfer. The former spouse, rather than the employee, is required to include an amount in gross income when the former spouse exercises the stock options. See Revenue Ruling 2002-22 and Revenue Ruling 2004-60 for details. You can find Revenue Ruling 2002-22 on page 849 of Internal Revenue Bulletin 2002-19 at *www.irs.gov/pub/irs-irbs/irb02-19.pdf*. See Revenue Ruling 2004-60, 2004-24 I.R.B. 1051, available at *www.irs.gov/irb/2004-24_IRB/ar13.html*.

For more information about employee stock options, see sections 421, 422, and 423 of the Internal Revenue Code and their related regulations.

Employer-Provided Cell Phones

The value of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a working condition fringe benefit. Personal use of an employer-provided cell phone, provided primarily for noncompensatory business reasons, is excludable from an employee's income as a *de minimis* fringe benefit. For the rules relating to these types of benefits, see De Minimis *(Minimal) Benefits*, earlier in this section, and *Working Condition Benefits*, later in this section.

Noncompensatory business purposes. You provide a cell phone primarily for noncompensatory business purposes if there are substantial business reasons for providing the cell phone. Examples of substantial business reasons include the employer's:

- Need to contact the employee at all times for work-related emergencies,
- Requirement that the employee be available to speak with clients at times when the employee is away from the office, and
- Need to speak with clients located in other time zones at times outside the employee's normal workday.

Cell phones provided to promote goodwill, boost morale, or attract prospective employees. You cannot exclude from an employee's wages the value of a cell phone provided to promote good will of an employee, to attract a prospective employee, or as a means of providing additional compensation to an employee.

Additional information. For additional information on the tax treatment of employer-provided cell phones, see Notice 2011-72, 2011-38 I.RB. 407, available at *www.irs.gov/irb/2011-38_IRB/ar07.html*.

Group-Term Life Insurance Coverage

This exclusion applies to life insurance coverage that meets all the following conditions.

- It provides a general death benefit that is not included in income.
- You provide it to a group of employees. See *The 10-employee rule*, later.
- It provides an amount of insurance to each employee based on a formula that prevents individual

selection. This formula must use factors such as the employee's age, years of service, pay, or position.

- You provide it under a policy you directly or indirectly carry. Even if you do not pay any of the policy's cost, you are considered to carry it if you arrange for payment of its cost by your employees and charge at least one employee less than, and at least one other employee more than, the cost of his or her insurance. Determine the cost of the insurance, for this purpose, as explained under *Coverage over the limit*, later.

Group-term life insurance does not include the following insurance.

- Insurance that does not provide general death benefits, such as travel insurance or a policy providing only accidental death benefits.
- Life insurance on the life of your employee's spouse or dependent. However, you may be able to exclude the cost of this insurance from the employee's wages as a *de minimis* benefit. See *De Minimis (Minimal) Benefits*, earlier in this section.
- Insurance provided under a policy that provides a permanent benefit (an economic value that extends beyond 1 policy year, such as paid-up or cash surrender value), unless certain requirements are met. See Regulations section 1.79-1 for details.

Employee. For this exclusion, treat the following individuals as employees.

1. A current common-law employee.
2. A full-time life insurance agent who is a current statutory employee.
3. An individual who was formerly your employee under (1) or (2).
4. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction and control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

The 10-employee rule. Generally, life insurance is not group-term life insurance unless you provide it to at least 10 full-time employees at some time during the year.

For this rule, count employees who choose not to receive the insurance unless, to receive it, they must contribute to the cost of benefits other than the group-term life insurance. For example, count an employee who could receive insurance by paying part of the cost, even if that employee chooses not to receive it. However, do not count an employee who must pay part or all of the cost of permanent benefits to get insurance, unless that employee chooses to receive it. A permanent benefit is an economic value extending beyond one policy year (for example, a paid-up or cash-surrender value) that is provided under a life insurance policy.

Exceptions. Even if you do not meet the 10-employee rule, two exceptions allow you to treat insurance as group-term life insurance.

Under the first exception, you do not have to meet the 10-employee rule if all the following conditions are met.

1. If evidence that the employee is insurable is required, it is limited to a medical questionnaire (completed by the employee) that does not require a physical.
2. You provide the insurance to all your full-time employees or, if the insurer requires the evidence mentioned in (1), to all full-time employees who provide evidence the insurer accepts.
3. You figure the coverage based on either a uniform percentage of pay or the insurer's coverage brackets that meet certain requirements. See Regulations section 1.79-1 for details.

Under the second exception, you do not have to meet the 10-employee rule if all the following conditions are met.

- You provide the insurance under a common plan covering your employees and the employees of at least one other employer who is not related to you.
- The insurance is restricted to, but mandatory for, all your employees who belong to, or are represented by, an organization (such as a union) that carries on substantial activities besides obtaining insurance.
- Evidence of whether an employee is insurable does not affect an employee's eligibility for insurance or the amount of insurance that employee gets.

To apply either exception, do not consider employees who were denied insurance for any of the following reasons.

- They were 65 or older.
- They customarily work 20 hours or less a week or 5 months or less in a calendar year.
- They have not been employed for the waiting period given in the policy. This waiting period cannot be more than 6 months.

Exclusion from wages. You can generally exclude the cost of up to $50,000 of group-term life insurance from the wages of an insured employee. You can exclude the same amount from the employee's wages when figuring social security and Medicare taxes. In addition, you do not have to withhold federal income tax or pay FUTA tax on any group-term life insurance you provide to an employee.

Coverage over the limit. You must include in your employee's wages the cost of group-term life insurance beyond $50,000 worth of coverage, reduced by the amount the employee paid toward the insurance. Report it as wages in boxes 1, 3, and 5 of the employee's Form W-2. Also, show it in box 12 with code "C." The amount is subject to social security and Medicare taxes, and you may, at your option, withhold federal income tax.

Figure the monthly cost of the insurance to include in the employee's wages by multiplying the number of thousands of dollars of all insurance coverage over $50,000 (figured to the nearest $100) by the cost shown in the following table. For all coverage provided within the calendar year, use the employee's age on the last day of the employee's tax year. You must prorate the cost from the table if less than a full month of coverage is involved.

Table 2-2. Cost Per $1,000 of Protection For 1 Month

Age	Cost
Under 25	$ .05
25 through 29	.06
30 through 34	.08
35 through 39	.09
40 through 44	.10
45 through 49	.15
50 through 54	.23
55 through 59	.43
60 through 64	.66
65 through 69	1.27
70 and older	2.06

You figure the total cost to include in the employee's wages by multiplying the monthly cost by the number of full months' coverage at that cost.

Example. Tom's employer provides him with group-term life insurance coverage of $200,000. Tom is 45 years old, is not a key employee, and pays $100 per year toward the cost of the insurance. Tom's employer must include $170 in his wages. The $200,000 of insurance coverage is reduced by $50,000. The yearly cost of $150,000 of coverage is $270 ($.15 x 150 x 12), and is reduced by the $100 Tom pays for the insurance. The employer includes $170 in boxes 1, 3, and 5 of Tom's Form W-2. The employer also enters $170 in box 12 with code "C."

Coverage for dependents. Group-term life insurance coverage paid by the employer for the spouse or dependents of an employee may be excludable from income as a *de minimis* fringe benefit if the face amount is not more than $2,000. If the face amount is greater than $2,000, the entire cost of the dependent coverage must be included in income unless the amount over $2,000 is purchased with employee contributions on an after-tax basis. The cost of the insurance is determined by using Table 2-2 above.

Former employees. When group-term life insurance over $50,000 is provided to an employee (including retirees) after his or her termination, the employee share of social security and Medicare taxes on that period of coverage is paid by the former employee with his or her tax return and is not collected by the employer. You are not required to collect those taxes. Use the table above to determine the amount of social security and Medicare taxes owed by the former employee for coverage provided after separation from service. Report those uncollected amounts separately in box 12 of Form W-2 using codes "M" and "N." See the Instructions for Forms W-2 and W-3 and the Instructions for Form 941.

Exception for key employees. Generally, if your group-term life insurance plan favors key employees as to participation or benefits, you must include the entire cost of the insurance in your key employees' wages. This exception generally does not apply to church plans. When figuring social security and Medicare taxes, you must also include the entire cost in the employees' wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you do not have to withhold federal income tax or pay FUTA tax on the cost of any group-term life insurance you provide to an employee.

For this purpose, the cost of the insurance is the greater of the following amounts.

- The premiums you pay for the employee's insurance. See Regulations section 1.79-4T(Q&A 6) for more information.
- The cost you figure using Table 2-2.

For this exclusion, a key employee during 2012 is an employee or former employee who is one of the following individuals. See section 416(i) of the Internal Revenue Code for more information.

1. An officer having annual pay of more than $165,000.
2. An individual who for 2012 was either of the following.
   a. A 5% owner of your business.
   b. A 1% owner of your business whose annual pay was more than $150,000.

A former employee who was a key employee upon retirement or separation from service is also a key employee.

Your plan does not favor key employees as to participation if at least one of the following is true.

- It benefits at least 70% of your employees.

- At least 85% of the participating employees are not key employees.
- It benefits employees who qualify under a set of rules you set up that do not favor key employees.

Your plan meets this participation test if it is part of a cafeteria plan (discussed in section 1) and it meets the participation test for those plans.

When applying this test, do not consider employees who:

- Have not completed 3 years of service,
- Are part-time or seasonal,
- Are nonresident aliens who receive no U.S. source earned income from you, or
- Are not included in the plan but are in a unit of employees covered by a collective bargaining agreement, if the benefits provided under the plan were the subject of good-faith bargaining between you and employee representatives.

Your plan does not favor key employees as to benefits if all benefits available to participating key employees are also available to all other participating employees. Your plan does not favor key employees just because the amount of insurance you provide to your employees is uniformly related to their pay.

S corporation shareholders. Because you cannot treat a 2% shareholder of an S corporation as an employee for this exclusion, you must include the cost of all group-term life insurance coverage you provide the 2% shareholder in his or her wages. When figuring social security and Medicare taxes, you must also include the cost of this coverage in the 2% shareholder's wages. Include the cost in boxes 1, 3, and 5 of Form W-2. However, you do not have to withhold federal income tax or pay federal unemployment tax on the cost of any group-term life insurance coverage you provide to the 2% shareholder.

Health Savings Accounts

A Health Savings Account (HSA) is an account owned by a qualified individual who is generally your employee or former employee. Any contributions that you make to an HSA become the employee's property and cannot be withdrawn by you. Contributions to the account are used to pay current or future medical expenses of the account owner, his or her spouse, and any qualified dependent. The medical expenses must not be reimbursable by insurance or other sources and their payment from HSA funds (distribution) will not give rise to a medical expense deduction on the individual's federal income tax return. For more information about HSAs, visit the Department of Treasury's website at *www.treas.gov/offices/public-affairs/hsa*.

Eligibility. A qualified individual must be covered by a High Deductible Health Plan (HDHP) and not be covered by other health insurance except for permitted insurance listed under section 223(c)(3) or insurance for accidents, disability, dental care, vision care, or long-term care. For calendar year 2012, a qualifying HDHP must have a deductible of at least $1,200 for self-only coverage or $2,400 for family coverage and must limit annual out-of-pocket expenses of the beneficiary to $6,050 for self-only coverage and $12,100 for family coverage.

There are no income limits that restrict an individual's eligibility to contribute to an HSA nor is there a requirement that the account owner have earned income to make a contribution.

Exceptions. An individual is not a qualified individual if he or she can be claimed as a dependent on another person's tax return. Also, an employee's participation in a health flexible spending arrangement (FSA) or health reimbursement arrangement (HRA) generally disqualifies the individual (and employer) from making contributions to his or her HSA. However, an individual may qualify to participate in an HSA if he or she is participating in only a limited-purpose FSA or HRA or a post-deductible FSA. For more information, see *Other employee health plans* in Publication 969.

Employer contributions. Up to specified dollar limits, cash contributions to the HSA of a qualified individual (determined monthly) are exempt from federal income tax withholding, social security tax, Medicare tax, and FUTA tax. For 2012, you can contribute up to $3,100 for self-only coverage or $6,250 for family coverage to a qualified individual's HSA.

The contribution amounts listed above are increased by $1,000 for a qualified individual who is age 55 or older at any time during the year. For two qualified individuals who are married to each other and who each are age 55 or older at any time during the year, each spouse's contribution limit is increased by $1,000 provided each spouse has a separate HSA. No contributions can be made to an individual's HSA after he or she becomes enrolled in Medicare Part A or Part B.

Nondiscrimination rules. Your contribution amount to an employee's HSA must be comparable for all employees who have comparable coverage during the same period. Otherwise, there will be an excise tax equal to 35% of the amount you contributed to all employees' HSAs.

For guidance on employer comparable contributions to HSAs under section 4980G in instances where an employee has not established an HSA by December 31 and in instances where an employer accelerates contributions for the calendar year for employees who have incurred qualified medical expenses, see Regulations section 54.4980G-4.

Exception. The Tax Relief and Health Care Act of 2006 allows employers to make larger HSA contributions for a

nonhighly compensated employee than for a highly compensated employee. A highly compensated employee for 2012 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Partnerships and S corporations. Partners and 2% shareholders of an S corporation are not eligible for salary reduction (pre-tax) contributions to an HSA. Employer contributions to the HSA of a bona fide partner or 2% shareholder are treated as distributions or guaranteed payments as determined by the facts and circumstances.

Cafeteria plans. You may contribute to an employee's HSA using a cafeteria plan and your contributions are not subject to the statutory comparability rules. However, cafeteria plan nondiscrimination rules still apply. For example, contributions under a cafeteria plan to employee HSAs cannot be greater for higher-paid employees than they are for lower-paid employees. Contributions that favor lower-paid employees are not prohibited.

Reporting requirements. You must report your contributions to an employee's HSA in box 12 of Form W-2 using code "W." The trustee or custodian of the HSA, generally a bank or insurance company, reports distributions from the HSA using Form 1099-SA, Distributions from an HSA, Archer MSA, or Medicare Advantage MSA.

Lodging on Your Business Premises

You can exclude the value of lodging you furnish to an employee from the employee's wages if it meets the following tests.

- It is furnished on your business premises.
- It is furnished for your convenience.
- The employee must accept it as a condition of employment.

Different tests may apply to lodging furnished by educational institutions. See section 119(d) of the Internal Revenue Code for details.

The exclusion does not apply if you allow your employee to choose to receive additional pay instead of lodging.

On your business premises. For this exclusion, your business premises is generally your employee's place of work. For special rules that apply to lodging furnished in a camp located in a foreign country, see section 119(c) of the Internal Revenue Code and its regulations.

For your convenience. Whether or not you furnish lodging for your convenience as an employer depends on all the facts and circumstances. You furnish the lodging to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the lodging is furnished as pay. However, a written statement that the lodging is furnished for your convenience is not sufficient.

Condition of employment. Lodging meets this test if you require your employees to accept the lodging because they need to live on your business premises to be able to properly perform their duties. Examples include employees who must be available at all times and employees who could not perform their required duties without being furnished the lodging.

It does not matter whether you must furnish the lodging as pay under the terms of an employment contract or a law fixing the terms of employment.

Example. A hospital gives Joan, an employee of the hospital, the choice of living at the hospital free of charge or living elsewhere and receiving a cash allowance in addition to her regular salary. If Joan chooses to live at the hospital, the hospital cannot exclude the value of the lodging from her wages because she is not required to live at the hospital to properly perform the duties of her employment.

S corporation shareholders. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Meals

This section discusses the exclusion rules that apply to *de minimis* meals and meals on your business premises.

De Minimis Meals

You can exclude any occasional meal or meal money you provide to an employee if it has so little value (taking into account how frequently you provide meals to your employees) that accounting for it would be unreasonable or administratively impracticable. The exclusion applies, for example, to the following items.

- Coffee, doughnuts, or soft drinks.

- Occasional meals or meal money provided to enable an employee to work overtime. However, the exclusion does not apply to meal money figured on the basis of hours worked.
- Occasional parties or picnics for employees and their guests.

This exclusion also applies to meals you provide at an employer-operated eating facility for employees if the annual revenue from the facility equals or exceeds the direct costs of the facility. For this purpose, your revenue from providing a meal is considered equal to the facility's direct operating costs to provide that meal if its value can be excluded from an employee's wages as explained under *Meals on Your Business Premises*, later.

TIP *If food or beverages you furnish to employees qualify as a* de minimis *benefit, you can deduct their full cost. The 50% limit on deductions for the cost of meals does not apply. The deduction limit on meals is discussed in chapter 2 of Publication 535.*

Employee. For this exclusion, treat any recipient of a *de minimis* meal as an employee.

Employer-operated eating facility for employees. An employer-operated eating facility for employees is an eating facility that meets all the following conditions.

- You own or lease the facility.
- You operate the facility. You are considered to operate the eating facility if you have a contract with another to operate it.
- The facility is on or near your business premises.
- You provide meals (food, drinks, and related services) at the facility during, or immediately before or after, the employee's workday.

Exclusion from wages. You can generally exclude the value of *de minimis* meals you provide to an employee from the employee's wages.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee the value of a meal provided at an employer-operated eating facility that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2012 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Meals on Your Business Premises

You can exclude the value of meals you furnish to an employee from the employee's wages if they meet the following tests.

- They are furnished on your business premises.
- They are furnished for your convenience.

This exclusion does not apply if you allow your employee to choose to receive additional pay instead of meals.

On your business premises. Generally, for this exclusion, the employee's place of work is your business premises.

For your convenience. Whether you furnish meals for your convenience as an employer depends on all the facts and circumstances. You furnish the meals to your employee for your convenience if you do this for a substantial business reason other than to provide the employee with additional pay. This is true even if a law or an employment contract provides that the meals are furnished as pay. However, a written statement that the meals are furnished for your convenience is not sufficient.

Meals excluded for all employees if excluded for more than half. If more than half of your employees who are furnished meals on your business premises are furnished the meals for your convenience, you can treat all meals you furnish to employees on your business premises as furnished for your convenience.

Food service employees. Meals you furnish to a restaurant or other food service employee during, or immediately before or after, the employee's working hours are furnished for your convenience. For example, if a waitress works through the breakfast and lunch periods, you can exclude from her wages the value of the breakfast and lunch you furnish in your restaurant for each day she works.

Example. You operate a restaurant business. You furnish your employee, Carol, who is a waitress working 7 a.m. to 4 p.m., two meals during each workday. You encourage but do not require Carol to have her breakfast on the business premises before starting work. She must have her lunch on the premises. Since Carol is a food service employee and works during the normal breakfast

and lunch periods, you can exclude from her wages the value of her breakfast and lunch.

If you also allow Carol to have meals on your business premises without charge on her days off, you cannot exclude the value of those meals from her wages.

Employees available for emergency calls. Meals you furnish during working hours so an employee will be available for emergency calls during the meal period are furnished for your convenience. You must be able to show these emergency calls have occurred or can reasonably be expected to occur.

Example. A hospital maintains a cafeteria on its premises where all of its 230 employees may get meals at no charge during their working hours. The hospital must have 120 of its employees available for emergencies. Each of these 120 employees is, at times, called upon to perform services during the meal period. Although the hospital does not require these employees to remain on the premises, they rarely leave the hospital during their meal period. Since the hospital furnishes meals on its premises to its employees so that more than half of them are available for emergency calls during meal periods, the hospital can exclude the value of these meals from the wages of all of its employees.

Short meal periods. Meals you furnish during working hours are furnished for your convenience if the nature of your business restricts an employee to a short meal period (such as 30 or 45 minutes) and the employee cannot be expected to eat elsewhere in such a short time. For example, meals can qualify for this treatment if your peak work-load occurs during the normal lunch hour. However, they do not qualify if the reason for the short meal period is to allow the employee to leave earlier in the day.

Example. Frank is a bank teller who works from 9 a.m. to 5 p.m. The bank furnishes his lunch without charge in a cafeteria the bank maintains on its premises. The bank furnishes these meals to Frank to limit his lunch period to 30 minutes, since the bank's peak workload occurs during the normal lunch period. If Frank got his lunch elsewhere, it would take him much longer than 30 minutes and the bank strictly enforces the time limit. The bank can exclude the value of these meals from Frank's wages.

Proper meals not otherwise available. Meals you furnish during working hours are furnished for your convenience if the employee could not otherwise eat proper meals within a reasonable period of time. For example, meals can qualify for this treatment if there are insufficient eating facilities near the place of employment.

Meals after work hours. Meals you furnish to an employee immediately after working hours are furnished for your convenience if you would have furnished them during working hours for a substantial nonpay business reason but, because of the work duties, they were not eaten during working hours.

Meals you furnish to promote goodwill, boost morale, or attract prospective employees. Meals you furnish to promote goodwill, boost morale, or attract prospective employees are not considered furnished for your convenience. However, you may be able to exclude their value as discussed under De Minimis *Meals*, earlier.

Meals furnished on nonworkdays or with lodging. You generally cannot exclude from an employee's wages the value of meals you furnish on a day when the employee is not working. However, you can exclude these meals if they are furnished with lodging that is excluded from the employee's wages as discussed under *Lodging on Your Business Premises*, earlier in this section.

Meals with a charge. The fact that you charge for the meals and that your employees may accept or decline the meals is not taken into account in determining whether or not meals are furnished for your convenience.

S corporation shareholder-employee. For this exclusion, do not treat a 2% shareholder of an S corporation as an employee of the corporation. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Moving Expense Reimbursements

This exclusion applies to any amount you directly or indirectly give to an employee, (including services furnished in kind) as payment for, or reimbursement of, moving expenses. You must make the reimbursement under rules similar to those described in chapter 11 of Publication 535 for reimbursement of expenses for travel, meals, and entertainment under accountable plans.

The exclusion applies only to reimbursement of moving expenses that the employee could deduct if he or she had paid or incurred them without reimbursement. However, it does not apply if the employee actually deducted the expenses in a previous year.

Deductible moving expenses. Deductible moving expenses include only the reasonable expenses of:

- Moving household goods and personal effects from the former home to the new home, and
- Traveling (including lodging) from the former home to the new home.

Deductible moving expenses do not include any expenses for meals and must meet both the distance test and the time test. The distance test is met if the new job

location is at least 50 miles farther from the employee's old home than the old job location was. The time test is met if the employee works at least 39 weeks during the first 12 months after arriving in the general area of the new job location.

For more information on deductible moving expenses, see Publication 521, Moving Expenses.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Exclusion from wages. Generally, you can exclude qualifying moving expense reimbursement you provide to an employee from the employee's wages. If you paid the reimbursement directly to the employee, report the amount in box 12 of Form W-2 with the code "P." Do not report payments to a third party for the employee's moving expenses or the value of moving services you provided in kind.

No-Additional-Cost Services

This exclusion applies to a service you provide to an employee if it does not cause you to incur any substantial additional costs. The service must be offered to customers in the ordinary course of the line of business in which the employee performs substantial services.

Generally, no-additional-cost services are excess capacity services, such as airline, bus, or train tickets; hotel rooms; or telephone services provided free or at a reduced price to employees working in those lines of business.

Substantial additional costs. To determine whether you incur substantial additional costs to provide a service to an employee, count any lost revenue as a cost. Do not reduce the costs you incur by any amount the employee pays for the service. You are considered to incur substantial additional costs if you or your employees spend a substantial amount of time in providing the service, even if the time spent would otherwise be idle or if the services are provided outside normal business hours.

Reciprocal agreements. A no-additional-cost service provided to your employee by an unrelated employer may qualify as a no-additional-cost service if all the following tests are met.

- The service is the same type of service generally provided to customers in both the line of business in which the employee works and the line of business in which the service is provided.
- You and the employer providing the service have a written reciprocal agreement under which a group of employees of each employer, all of whom perform substantial services in the same line of business, may receive no-additional-cost services from the other employer.
- Neither you nor the other employer incurs any substantial additional cost either in providing the service or because of the written agreement.

Employee. For this exclusion, treat the following individuals as employees.

1. A current employee.
2. A former employee who retired or left on disability.
3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.
6. A partner who performs services for a partnership.

Treat services you provide to the spouse or dependent child of an employee as provided to the employee. For this fringe benefit, dependent child means any son, stepson, daughter, or stepdaughter who is a dependent of the employee, or both of whose parents have died and who has not reached age 25. Treat a child of divorced parents as a dependent of both parents.

Treat any use of air transportation by the parent of an employee as use by the employee. This rule does not apply to use by the parent of a person considered an employee because of item (3) or (4) above.

Exclusion from wages. You can generally exclude the value of a no-additional-cost service you provide to an employee from the employee's wages.

Exception for highly compensated employees. You cannot exclude from the wages of a highly compensated employee the value of a no-additional-cost service that is not available on the same terms to one of the following groups.

- All of your employees.
- A group of employees defined under a reasonable classification you set up that does not favor highly compensated employees.

For this exclusion, a highly compensated employee for 2012 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Retirement Planning Services

You may exclude from an employee's wages the value of any retirement planning advice or information you provide to your employee or his or her spouse if you maintain a qualified retirement plan as defined in section 219(g)(5) of the Internal Revenue Code. In addition to employer plan advice and information, the services provided may include general advice and information on retirement. However, the exclusion does not apply to services for tax preparation, accounting, legal, or brokerage services. You cannot exclude from the wages of a highly compensated employee retirement planning services that are not available on the same terms to each member of a group of employees normally provided education and information about the employer's qualified retirement plan.

Transportation (Commuting) Benefits

This section discusses exclusion rules that apply to benefits you provide to your employees for their personal transportation, such as commuting to and from work. These rules apply to the following transportation benefits.

- *De minimis* transportation benefits.
- Qualified transportation benefits.

Special rules that apply to demonstrator cars and qualified nonpersonal-use vehicles are discussed under *Working Condition Benefits*, later in this section.

De Minimis Transportation Benefits

You can exclude the value of any *de minimis* transportation benefit you provide to an employee from the employee's wages. A *de minimis* transportation benefit is any local transportation benefit you provide to an employee if it has so little value (taking into account how frequently you provide transportation to your employees) that accounting for it would be unreasonable or administratively impracticable. For example, it applies to occasional transportation fare you give an employee because the employee is working overtime if the benefit is reasonable and is not based on hours worked.

Employee. For this exclusion, treat any recipient of a *de minimis* transportation benefit as an employee.

Qualified Transportation Benefits

This exclusion applies to the following benefits.

- A ride in a commuter highway vehicle between the employee's home and work place.
- A transit pass.
- Qualified parking.
- Qualified bicycle commuting reimbursement.

The exclusion applies whether you provide only one or a combination of these benefits to your employees.

Qualified transportation benefits can be provided directly by you or through a bona fide reimbursement arrangement. However, cash reimbursements for transit passes qualify only if a voucher or a similar item that the employee can exchange only for a transit pass is not readily available for direct distribution by you to your employee. A voucher is readily available for direct distribution only if an employee can obtain it from a voucher provider that does not impose fare media charges or other restrictions that effectively prevent the employer from obtaining vouchers. See Regulations section 1.132-9(b)(Q&A 16–19) for more information.

Generally, you can exclude qualified transportation fringe benefits from an employee's wages even if you provide them in place of pay. However, qualified bicycle commuting reimbursements cannot be excluded if the reimbursements are provided in place of pay. For information about providing qualified transportation fringe benefits under a compensation reduction agreement, see Regulations section 1.132-9(b)(Q&A 11–15).

Commuter highway vehicle. A commuter highway vehicle is any highway vehicle that seats at least 6 adults (not including the driver). In addition, you must reasonably expect that at least 80% of the vehicle mileage will be for transporting employees between their homes and work place with employees occupying at least one-half the vehicle's seats (not including the driver's).

Transit pass. A transit pass is any pass, token, farecard, voucher, or similar item entitling a person to ride, free of charge or at a reduced rate, on one of the following.

- On mass transit.

- In a vehicle that seats at least 6 adults (not including the driver) if a person in the business of transporting persons for pay or hire operates it.

Mass transit may be publicly or privately operated and includes bus, rail, or ferry. For guidance on the use of smart cards and debit cards to provide qualified transportation fringes, see Revenue Ruling 2006-57, 2006-47 I.R.B. 911, available at www.irs.gov/irb/2006-47_IRB/ar05.html and Notice 2010-94, 2010-52 I.R.B. 927, available at www.irs.gov/irb/2010-52_IRB/ar18.html.

Qualified parking. Qualified parking is parking you provide to your employees on or near your business premises. It includes parking on or near the location from which your employees commute to work using mass transit, commuter highway vehicles, or carpools. It does not include parking at or near your employee's home.

Qualified bicycle commuting reimbursement. For any calendar year, the exclusion for qualified bicycle commuting reimbursement includes any employer reimbursement during the 15-month period beginning with the first day of the calendar year for reasonable expenses incurred by the employee during the calendar year.

Reasonable expenses include:

- The purchase of a bicycle, and
- bicycle improvements, repair, and storage.

These are considered reasonable expenses as long as the bicycle is regularly used for travel between the employee's residence and place of employment.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A leased employee who has provided services to you on a substantially full-time basis for at least a year if the services are performed under your primary direction or control.

A self-employed individual is not an employee for qualified transportation benefit purposes.

Exception for S corporation shareholders. Do not treat a 2% shareholder of an S corporation as an employee of the corporation for this purpose. A 2% shareholder is someone who directly or indirectly owns (at any time during the year) more than 2% of the corporation's stock or stock with more than 2% of the voting power. Treat a 2% shareholder as you would a partner in a partnership for fringe benefit purposes, but do not treat the benefit as a reduction in distributions to the 2% shareholder.

Relation to other fringe benefits. You cannot exclude a qualified transportation benefit you provide to an employee under the *de minimis* or working condition benefit rules. However, if you provide a local transportation benefit other than by transit pass or commuter highway vehicle, or to a person other than an employee, you may be able to exclude all or part of the benefit under other fringe benefit rules (*de minimis*, working condition, etc.).

Exclusion from wages. You can generally exclude the value of transportation benefits that you provide to an employee during 2012 from the employee's wages up to the following limits.

- $125 per month for combined commuter highway vehicle transportation and transit passes.
- $240 per month for qualified parking.
- For a calendar year, $20 multiplied by the number of qualified bicycle commuting months during that year for qualified bicycle commuting reimbursement of expenses incurred during the year.

Qualified bicycle commuting month. For any employee, a qualified bicycle commuting month is any month the employee:

1. Regularly uses the bicycle for a substantial portion of the travel between the employee's residence and place of employment and
2. Does not receive:
   a. Transportation in a commuter highway vehicle,
   b. Any transit pass, or
   c. Qualified parking benefits.

Benefits more than the limit. If the value of a benefit for any month is more than its limit, include in the employee's wages the amount over the limit minus any amount the employee paid for the benefit. You cannot exclude the excess from the employee's wages as a *de minimis* transportation benefit.

More information. For more information on qualified transportation benefits, including van pools, and how to determine the value of parking, see Regulations section 1.132-9.

Tuition Reduction

An educational organization can exclude the value of a qualified tuition reduction it provides to an employee from the employee's wages.

A tuition reduction for undergraduate education generally qualifies for this exclusion if it is for the education of one of the following individuals.

1. A current employee.
2. A former employee who retired or left on disability.

3. A widow or widower of an individual who died while an employee.
4. A widow or widower of a former employee who retired or left on disability.
5. A dependent child or spouse of any individual listed in (1) through (4) above.

A tuition reduction for graduate education qualifies for this exclusion only if it is for the education of a graduate student who performs teaching or research activities for the educational organization.

For more information on this exclusion, see Publication 970.

Working Condition Benefits

This exclusion applies to property and services you provide to an employee so that the employee can perform his or her job. It applies to the extent the employee could deduct the cost of the property or services as a business expense or depreciation expense if he or she had paid for it. The employee must meet any substantiation requirements that apply to the deduction. Examples of working condition benefits include an employee's use of a company car for business, an employer-provided cell phone provided primarily for noncompensatory business purposes, and job-related education provided to an employee.

This exclusion also applies to a cash payment you provide for an employee's expenses for a specific or prearranged business activity for which a deduction is otherwise allowable to the employee. You must require the employee to verify that the payment is actually used for those expenses and to return any unused part of the payment.

For information on deductible employee business expenses, see *Unreimbursed Employee Expenses* in Publication 529, Miscellaneous Deductions.

The exclusion does not apply to the following items.

- A service or property provided under a flexible spending account in which you agree to provide the employee, over a time period, a certain level of unspecified noncash benefits with a predetermined cash value.
- A physical examination program you provide, even if mandatory.
- Any item to the extent the employee could deduct its cost as an expense for a trade or business other than your trade or business.

Employee. For this exclusion, treat the following individuals as employees.

- A current employee.
- A partner who performs services for a partnership.
- A director of your company.
- An independent contractor who performs services for you.

Vehicle allocation rules. If you provide a car for an employee's use, the amount you can exclude as a working condition benefit is the amount that would be allowable as a deductible business expense if the employee paid for its use. If the employee uses the car for both business and personal use, the value of the working condition benefit is the part determined to be for business use of the vehicle. See *Business use of your car* under *Personal versus Business Expenses* in chapter 1 of Publication 535. Also, see the special rules for certain demonstrator cars and qualified nonpersonal-use vehicles discussed below.

However, instead of excluding the value of the working condition benefit, you can include the entire annual lease value of the car in the employee's wages. The employee can then claim any deductible business expense for the car as an itemized deduction on his or her personal income tax return. This option is available only if you use the lease value rule (discussed in section 3) to value the benefit.

Demonstrator cars. Generally, all of the use of a demonstrator car by your full-time auto salesperson qualifies as a working condition benefit if the use is primarily to facilitate the services the salesperson provides for you and there are substantial restrictions on personal use. For more information and the definition of "full-time auto salesperson," see Regulations section 1.132-5(o). For optional, simplified methods used to determine if full, partial, or no exclusion of income to the employee for personal use of a demonstrator car applies, see Revenue Procedure 2001-56. You can find Revenue Procedure 2001-56 on page 590 of Internal Revenue Bulletin 2001-51 at *www.irs.gov/pub/irs-irbs/irb01-51.pdf.*

Qualified nonpersonal-use vehicles. All of an employee's use of a qualified nonpersonal-use vehicle is a working condition benefit. A qualified nonpersonal-use vehicle is any vehicle the employee is not likely to use more than minimally for personal purposes because of its design. Qualified nonpersonal-use vehicles generally include all of the following vehicles.

- Clearly marked, through painted insignia or words, police, fire, and public safety vehicles.
- Unmarked vehicles used by law enforcement officers if the use is officially authorized.
- An ambulance or hearse used for its specific purpose.
- Any vehicle designed to carry cargo with a loaded gross vehicle weight over 14,000 pounds.
- Delivery trucks with seating for the driver only, or the driver plus a folding jump seat.

- A passenger bus with a capacity of at least 20 passengers used for its specific purpose.
- School buses.
- Tractors and other special-purpose farm vehicles.
- Bucket trucks, cement mixers, combines, cranes and derricks, dump trucks (including garbage trucks), flatbed trucks, forklifts, qualified moving vans, qualified specialized utility repair trucks, and refrigerated trucks.

See Regulations section 1.274-5(k) for the definition of qualified moving van and qualified specialized utility repair truck.

Pickup trucks. A pickup truck with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal-use vehicle if it has been specially modified so it is not likely to be used more than minimally for personal purposes. For example, a pickup truck qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and meets either of the following requirements.

1. It is equipped with at least one of the following items.
   a. A hydraulic lift gate.
   b. Permanent tanks or drums.
   c. Permanent side boards or panels that materially raise the level of the sides of the truck bed.
   d. Other heavy equipment (such as an electric generator, welder, boom, or crane used to tow automobiles and other vehicles).
2. It is used primarily to transport a particular type of load (other than over the public highways) in a construction, manufacturing, processing, farming, mining, drilling, timbering, or other similar operation for which it was specially designed or significantly modified.

Vans. A van with a loaded gross vehicle weight of 14,000 pounds or less is a qualified nonpersonal-use vehicle if it has been specially modified so it is not likely to be used more than minimally for personal purposes. For example, a van qualifies if it is clearly marked with permanently affixed decals, special painting, or other advertising associated with your trade, business, or function and has a seat for the driver only (or the driver and one other person) and either of the following items.

- Permanent shelving that fills most of the cargo area.
- An open cargo area and the van always carries merchandise, material, or equipment used in your trade, business, or function.

Education. Certain job-related education you provide to an employee may qualify for exclusion as a working condition benefit. To qualify, the education must meet the same requirements that would apply for determining whether the employee could deduct the expenses had the employee paid the expenses. The education must meet at least one of the following tests.

- The education is required by the employer or by law for the employee to keep his or her present salary, status, or job. The required education must serve a bona fide business purpose of the employer.
- The education maintains or improves skills needed in the job.

However, even if the education meets one or both of the above tests, it is not qualifying education if it:

- Is needed to meet the minimum educational requirements of the employee's present trade or business, or
- Is part of a program of study that will qualify the employee for a new trade or business.

Outplacement services. An employee's use of outplacement services qualifies as a working condition benefit if you provide the services to the employee on the basis of need, you get a substantial business benefit from the services distinct from the benefit you would get from the payment of additional wages, and the employee is seeking employment in the same trade or business of the employer. Substantial business benefits include promoting a positive business image, maintaining employee morale, and avoiding wrongful termination suits.

Outplacement services do not qualify as a working condition benefit if the employee can choose to receive cash or taxable benefits in place of the services. If you maintain a severance plan and permit employees to get outplacement services with reduced severance pay, include in the employee's wages the difference between the unreduced severance and the reduced severance payments.

Exclusion from wages. You can generally exclude the value of a working condition benefit you provide to an employee from the employee's wages.

Exception for independent contractors. You cannot exclude the value of parking (unless *de minimis*), transit passes (if their monthly value exceeds $125 per month), or the use of consumer goods you provide in a product testing program from the compensation you pay to an independent contractor who performs services for you.

Exception for company directors. You cannot exclude the value of the use of consumer goods you provide in a product testing program from the compensation you pay to a director.

3. Fringe Benefit Valuation Rules

This section discusses the rules you must use to determine the value of a fringe benefit you provide to an employee. You must determine the value of any benefit you cannot exclude under the rules in section 2 or for which the amount you can exclude is limited. See *Including taxable benefits in pay* in section 1.

In most cases, you must use the general valuation rule to value a fringe benefit. However, you may be able to use a special valuation rule to determine the value of certain benefits.

This section does not discuss the special valuation rule used to value meals provided at an employer-operated eating facility for employees. For that rule, see Regulations section 1.61-21(j). This section also does not discuss the special valuation rules used to value the use of aircraft. For those rules, see Regulations sections 1.61-21(g) and (h). The fringe benefit valuation formulas are published in the Internal Revenue Bulletin as Revenue Rulings twice during the year. The formula applicable for the first half of the year is usually available at the end of March. The formula applicable for the second half of the year is usually available at the end of September.

General Valuation Rule

You must use the general valuation rule to determine the value of most fringe benefits. Under this rule, the value of a fringe benefit is its fair market value.

Fair market value. The fair market value (FMV) of a fringe benefit is the amount an employee would have to pay a third party in an arm's-length transaction to buy or lease the benefit. Determine this amount on the basis of all the facts and circumstances.

Neither the amount the employee considers to be the value of the fringe benefit nor the cost you incur to provide the benefit determines its FMV.

Employer-provided vehicles. In general, the FMV of an employer-provided vehicle is the amount the employee would have to pay a third party to lease the same or similar vehicle on the same or comparable terms in the geographic area where the employee uses the vehicle. A comparable lease term would be the amount of time the vehicle is available for the employee's use, such as a 1-year period.

Do not determine the FMV by multiplying a cents-per-mile rate times the number of miles driven unless the employee can prove the vehicle could have been leased on a cents-per-mile basis.

Cents-Per-Mile Rule

Under this rule, you determine the value of a vehicle you provide to an employee for personal use by multiplying the standard mileage rate by the total miles the employee drives the vehicle for personal purposes. Personal use is any use of the vehicle other than use in your trade or business. This amount must be included in the employee's wages or reimbursed by the employee. For 2012, the standard mileage rate is 55.5 cents per mile.

You can use the cents-per-mile rule if either of the following requirements is met.

- You reasonably expect the vehicle to be regularly used in your trade or business throughout the calendar year (or for a shorter period during which you own or lease it).
- The vehicle meets the mileage test.

CAUTION ***Maximum automobile value.*** *You cannot use the cents-per-mile rule for an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van) if its value when you first make it available to any employee for personal use is more than an amount determined by the IRS as the maximum automobile value for the year. For example, you cannot use the cents-per-mile rule for an automobile that you first made available to an employee in 2011 if its value at that time exceeded $15,300 for a passenger automobile or $16,200 for a truck or van. The maximum automobile value for 2012 will be published in a revenue procedure in the Internal Revenue Bulletin early in 2012. If you and the employee own or lease the automobile together, see Regulations section 1.61-21(e)(1)(iii)(B).*

Vehicle. For the cents-per-mile rule, a vehicle is any motorized wheeled vehicle, including an automobile, manufactured primarily for use on public streets, roads, and highways.

Regular use in your trade or business. A vehicle is regularly used in your trade or business if at least one of the following conditions is met.

- At least 50% of the vehicle's total annual mileage is for your trade or business.
- You sponsor a commuting pool that generally uses the vehicle each workday to drive at least three employees to and from work.
- The vehicle is regularly used in your trade or business on the basis of all of the facts and circumstances. Infrequent business use of the vehicle, such as for occasional trips to the airport or between your multiple business premises, is not regular use of the vehicle in your trade or business.

Mileage test. A vehicle meets the mileage test for a calendar year if both of the following requirements are met.

- The vehicle is actually driven at least 10,000 miles during the year. If you own or lease the vehicle only part of the year, reduce the 10,000 mile requirement proportionately.
- The vehicle is used during the year primarily by employees. Consider the vehicle used primarily by employees if they use it consistently for commuting. Do not treat the use of the vehicle by another individual whose use would be taxed to the employee as use by the employee.

For example, if only one employee uses a vehicle during the calendar year and that employee drives the vehicle at least 10,000 miles in that year, the vehicle meets the mileage test even if all miles driven by the employee are personal.

Consistency requirements. If you use the cents-per-mile rule, the following requirements apply.

- You must begin using the cents-per-mile rule on the first day you make the vehicle available to any employee for personal use. However, if you use the commuting rule (discussed later) when you first make the vehicle available to any employee for personal use, you can change to the cents-per-mile rule on the first day for which you do not use the commuting rule.
- You must use the cents-per-mile rule for all later years in which you make the vehicle available to any employee and the vehicle qualifies, except that you can use the commuting rule for any year during which use of the vehicle qualifies under the commuting rules. However, if the vehicle does not qualify for the cents-per-mile rule during a later year, you can use for that year and thereafter any other rule for which the vehicle then qualifies.
- You must continue to use the cents-per-mile rule if you provide a replacement vehicle to the employee (and the vehicle qualifies for the use of this rule) and your primary reason for the replacement is to reduce federal taxes.

Items included in cents-per-mile rate. The cents-per-mile rate includes the value of maintenance and insurance for the vehicle. Do not reduce the rate by the value of any service included in the rate that you did not provide. You can take into account the services actually provided for the vehicle by using the *General Valuation Rule*, earlier.

For miles driven in the United States, its territories and possessions, Canada, and Mexico, the cents-per-mile rate includes the value of fuel you provide. If you do not provide fuel, you can reduce the rate by no more than 5.5 cents.

For special rules that apply to fuel you provide for miles driven outside the United States, Canada, and Mexico, see Regulations section 1.61-21(e)(3)(ii)(B).

The value of any other service you provide for a vehicle is not included in the cents-per-mile rate. Use the general valuation rule to value these services.

Commuting Rule

Under this rule, you determine the value of a vehicle you provide to an employee for commuting use by multiplying each one-way commute (that is, from home to work or from work to home) by $1.50. If more than one employee commutes in the vehicle, this value applies to each employee. This amount must be included in the employee's wages or reimbursed by the employee.

You can use the commuting rule if all the following requirements are met.

- You provide the vehicle to an employee for use in your trade or business and, for bona fide noncompensatory business reasons, you require the employee to commute in the vehicle. You will be treated as if you had met this requirement if the vehicle is generally used each workday to carry at least three employees to and from work in an employer sponsored commuting pool.
- You establish a written policy under which you do not allow the employee to use the vehicle for personal purposes other than for commuting or *de minimis* personal use (such as a stop for a personal errand on the way between a business delivery and the employee's home). Personal use of a vehicle is all use that is not for your trade or business.
- The employee does not use the vehicle for personal purposes other than commuting and *de minimis* personal use.
- If this vehicle is an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van), the employee who uses it for commuting is not a control employee. See *Control employee* below.

Vehicle. For this rule, a vehicle is any motorized wheeled vehicle, including an automobile manufactured primarily for use on public streets, roads, and highways.

Control employee. A control employee of a nongovernment employer for 2012 is generally any of the following employees.

- A board or shareholder-appointed, confirmed, or elected officer whose pay is $100,000 or more.
- A director.

- An employee whose pay is $205,000 or more.
- An employee who owns a 1% or more equity, capital, or profits interest in your business.

A control employee for a government employer for 2012 is either of the following.

- A government employee whose compensation is equal to or exceeds Federal Government Executive Level V. See the Office of Personnel Management website at *www.opm.gov/oca/payrates/index.asp* for 2012 compensation information.
- An elected official.

Highly compensated employee alternative. Instead of using the preceding definition, you can choose to define a control employee as any highly compensated employee. A highly compensated employee for 2012 is an employee who meets either of the following tests.

1. The employee was a 5% owner at any time during the year or the preceding year.
2. The employee received more than $115,000 in pay for the preceding year.

You can choose to ignore test (2) if the employee was not also in the top 20% of employees when ranked by pay for the preceding year.

Lease Value Rule

Under this rule, you determine the value of an automobile you provide to an employee by using its annual lease value. For an automobile provided only part of the year, use either its prorated annual lease value or its daily lease value.

If the automobile is used by the employee in your business, you generally reduce the lease value by the amount that is excluded from the employee's wages as a working condition benefit. In order to do this, the employee must account to the employer for the business use. This is done by substantiating the usage (mileage, for example), the time and place of the travel, and the business purpose of the travel. Written records made at the time of each business use are the best evidence. Any use of a company-provided vehicle that is not substantiated as business use is included in income. The working condition benefit is the amount that would be an allowable business expense deduction for the employee if the employee paid for the use of the vehicle. However, you can choose to include the entire lease value in the employee's wages. See *Vehicle allocation rules*, under *Working Condition Benefit* in section 2.

Automobile. For this rule, an automobile is any four-wheeled vehicle (such as a car, pickup truck, or van) manufactured primarily for use on public streets, roads, and highways.

Consistency requirements. If you use the lease value rule, the following requirements apply.

1. You must begin using this rule on the first day you make the automobile available to any employee for personal use. However, the following exceptions apply.
   a. If you use the commuting rule (discussed earlier in this section) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day for which you do not use the commuting rule.
   b. If you use the cents-per-mile rule (discussed earlier in this section) when you first make the automobile available to any employee for personal use, you can change to the lease value rule on the first day on which the automobile no longer qualifies for the cents-per-mile rule.
2. You must use this rule for all later years in which you make the automobile available to any employee, except that you can use the commuting rule for any year during which use of the automobile qualifies.
3. You must continue to use this rule if you provide a replacement automobile to the employee and your primary reason for the replacement is to reduce federal taxes.

Annual Lease Value

Generally, you figure the annual lease value of an automobile as follows.

1. Determine the fair market value (FMV) of the automobile on the first date it is available to any employee for personal use.
2. Using *Table 3-1. Annual Lease Value Table*, read down column (1) until you come to the dollar range within which the FMV of the automobile falls. Then read across to column (2) to find the annual lease value.
3. Multiply the annual lease value by the percentage of personal miles out of total miles driven by the employee.

Table 3-1. Annual Lease Value Table

(1) Automobile FMV	(2) Annual Lease
$ 0 to 999	$ 600
1,000 to 1,999	850
2,000 to 2,999	1,100

(1) Automobile FMV	(2) Annual Lease
3,000 to 3,999	1,350
4,000 to 4,999	1,600
5,000 to 5,999	1,850
6,000 to 6,999	2,100
7,000 to 7,999	2,350
8,000 to 8,999	2,600
9,000 to 9,999	2,850
10,000 to 10,999	3,100
11,000 to 11,999	3,350
12,000 to 12,999	3,600
13,000 to 13,999	3,850
14,000 to 14,999	4,100
15,000 to 15,999	4,350
16,000 to 16,999	4,600
17,000 to 17,999	4,850
18,000 to 18,999	5,100
19,000 to 19,999	5,350
20,000 to 20,999	5,600
21,000 to 21,999	5,850
22,000 to 22,999	6,100
23,000 to 23,999	6,350
24,000 to 24,999	6,600
25,000 to 25,999	6,850
26,000 to 27,999	7,250
28,000 to 29,999	7,750
30,000 to 31,999	8,250
32,000 to 33,999	8,750
34,000 to 35,999	9,250
36,000 to 37,999	9,750
38,000 to 39,999	10,250
40,000 to 41,999	10,750
42,000 to 43,999	11,250
44,000 to 45,999	11,750
46,000 to 47,999	12,250
48,000 to 49,999	12,750
50,000 to 51,999	13,250
52,000 to 53,999	13,750
54,000 to 55,999	14,250
56,000 to 57,999	14,750
58,000 to 59,999	15,250

For automobiles with a FMV of more than $59,999, the annual lease value equals (.25 × the FMV of the automobile) + $500.

FMV. The FMV of an automobile is the amount a person would pay to buy it from a third party in an arm's-length transaction in the area in which the automobile is bought or leased. That amount includes all purchase expenses, such as sales tax and title fees.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(5)(v). If you and the employee own or lease the automobile together, see Regulations section 1.61-21(d)(2)(ii).

You do not have to include the value of a telephone or any specialized equipment added to, or carried in, the automobile if the equipment is necessary for your business. However, include the value of specialized equipment if the employee to whom the automobile is available uses the specialized equipment in a trade or business other than yours.

Neither the amount the employee considers to be the value of the benefit nor your cost for either buying or leasing the automobile determines its FMV. However, see *Safe-harbor value*, next.

Safe-harbor value. You may be able to use a safe-harbor value as the FMV.

For an automobile you bought at arm's length, the safe-harbor value is your cost, including sales tax, title, and other purchase expenses. You cannot have been the manufacturer of the automobile.

For an automobile you lease, you can use any of the following as the safe-harbor value.

- The manufacturer's invoice price (including options) plus 4%.
- The manufacturer's suggested retail price minus 8% (including sales tax, title, and other expenses of purchase).
- The retail value of the automobile reported by a nationally recognized pricing source if that retail value is reasonable for the automobile.

Items included in annual lease value table. Each annual lease value in the table includes the value of maintenance and insurance for the automobile. Do not reduce the annual lease value by the value of any of these services that you did not provide. For example, do not reduce the annual lease value by the value of a maintenance service contract or insurance you did not provide. You can take into account the services actually provided for the automobile by using the general valuation rule discussed earlier.

Items not included. The annual lease value does not include the value of fuel you provide to an employee for personal use, regardless of whether you provide it, reimburse its cost, or have it charged to you. You must include the value of the fuel separately in the employee's wages. You can value fuel you provided at FMV or at 5.5 cents per mile for all miles driven by the employee. However, you cannot value at 5.5 cents per mile fuel you provide for miles driven outside the United States (including its possessions and territories), Canada, and Mexico.

If you reimburse an employee for the cost of fuel, or have it charged to you, you generally value the fuel at the amount you reimburse, or the amount charged to you if it was bought at arm's length.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(3)(ii)(D).

If you provide any service other than maintenance and insurance for an automobile, you must add the FMV of that service to the annual lease value of the automobile to figure the value of the benefit.

4-year lease term. The annual lease values in the table are based on a 4-year lease term. These values will generally stay the same for the period that begins with the first date you use this rule for the automobile and ends on

December 31 of the fourth full calendar year following that date.

Figure the annual lease value for each later 4-year period by determining the FMV of the automobile on January 1 of the first year of the later 4-year period and selecting the amount in column (2) of the table that corresponds to the appropriate dollar range in column (1).

Using the special accounting rule. If you use the special accounting rule for fringe benefits discussed in section 4, you can figure the annual lease value for each later 4-year period at the beginning of the special accounting period that starts immediately before the January 1 date described in the previous paragraph.

For example, assume that you use the special accounting rule and that, beginning on November 1, 2011, the special accounting period is November 1 to October 31. You elected to use the lease value rule as of January 1, 2012. You can refigure the annual lease value on November 1, 2015, rather than on January 1, 2016.

Transferring an automobile from one employee to another. Unless the primary purpose of the transfer is to reduce federal taxes, you can refigure the annual lease value based on the FMV of the automobile on January 1 of the calendar year of transfer.

However, if you use the special accounting rule for fringe benefits discussed in section 4, you can refigure the annual lease value (based on the FMV of the automobile) at the beginning of the special accounting period in which the transfer occurs.

Prorated Annual Lease Value

If you provide an automobile to an employee for a continuous period of 30 or more days but less than an entire calendar year, you can prorate the annual lease value. Figure the prorated annual lease value by multiplying the annual lease value by a fraction, using the number of days of availability as the numerator and 365 as the denominator.

If you provide an automobile continuously for at least 30 days, but the period covers 2 calendar years (or 2 special accounting periods if you are using the special accounting rule for fringe benefits discussed in section 4), you can use the prorated annual lease value or the daily lease value.

If you have 20 or more automobiles, see Regulations section 1.61-21(d)(6).

If an automobile is unavailable to the employee because of his or her personal reasons (for example, if the employee is on vacation), you cannot take into account the periods of unavailability when you use a prorated annual lease value.

CAUTION *You cannot use a prorated annual lease value if the reduction of federal tax is the main reason the automobile is unavailable.*

Daily Lease Value

If you provide an automobile to an employee for a continuous period of less than 30 days, use the daily lease value to figure its value. Figure the daily lease value by multiplying the annual lease value by a fraction, using four times the number of days of availability as the numerator and 365 as the denominator.

However, you can apply a prorated annual lease value for a period of continuous availability of less than 30 days by treating the automobile as if it had been available for 30 days. Use a prorated annual lease value if it would result in a lower valuation than applying the daily lease value to the shorter period of availability.

Unsafe Conditions Commuting Rule

Under this rule, the value of commuting transportation you provide to a qualified employee solely because of unsafe conditions is $1.50 for a one-way commute (that is, from home to work or from work to home). This amount must be included in the employee's wages or reimbursed by the employee.

You can use the unsafe conditions commuting rule for qualified employees if all of the following requirements are met.

- The employee would ordinarily walk or use public transportation for commuting.
- You have a written policy under which you do not provide the transportation for personal purposes other than commuting because of unsafe conditions.
- The employee does not use the transportation for personal purposes other than commuting because of unsafe conditions.

These requirements must be met on a trip-by-trip basis.

Commuting transportation. This is transportation to or from work using any motorized wheeled vehicle (including an automobile) manufactured for use on public streets, roads, and highways. You or the employee must buy the transportation from a party that is not related to you. If the employee buys it, you must reimburse the employee for its cost (for example, cab fare) under a bona fide reimbursement arrangement.

Qualified employee. A qualified employee for 2012 is one who:

- Performs services during the year;
- Is paid on an hourly basis;
- Is not claimed under section 213(a)(1) of the Fair Labor Standards Act (FLSA) of 1938 (as amended) to be exempt from the minimum wage and maximum hour provisions;

- Is within a classification for which you actually pay, or have specified in writing that you will pay, overtime pay of at least one and one-half times the regular rate provided in section 207 of FLSA; and
- Received pay of not more than $115,000 during 2011.

However, an employee is not considered a qualified employee if you do not comply with the recordkeeping requirements concerning the employee's wages, hours, and other conditions and practices of employment under section 211(c) of FLSA and the related regulations.

Unsafe conditions. Unsafe conditions exist if, under the facts and circumstances, a reasonable person would consider it unsafe for the employee to walk or use public transportation at the time of day the employee must commute. One factor indicating whether it is unsafe is the history of crime in the geographic area surrounding the employee's workplace or home at the time of day the employee commutes.

4. Rules for Withholding, Depositing, and Reporting

Use the following guidelines for withholding, depositing, and reporting taxable noncash fringe benefits. For additional information on how to withhold on fringe benefits, see Publication 15 (Circular E), section 5.

Valuation of fringe benefits. Generally, you must determine the value of noncash fringe benefits no later than January 31 of the next year. Before January 31, you may reasonably estimate the value of the fringe benefits for purposes of withholding and depositing on time.

Choice of period for withholding, depositing, and reporting. For employment tax and withholding purposes, you can treat fringe benefits (including personal use of employer-provided highway motor vehicles) as paid on a pay period, quarter, semiannual, annual, or other basis. But the benefits must be treated as paid no less frequently than annually. You do not have to choose the same period for all employees. You can withhold more frequently for some employees than for others.

You can change the period as often as you like as long as you treat all of the benefits provided in a calendar year as paid no later than December 31 of the calendar year.

You can also treat the value of a single fringe benefit as paid on one or more dates in the same calendar year, even if the employee receives the entire benefit at one time. For example, if your employee receives a fringe benefit valued at $1,000 in one pay period during 2012, you can treat it as made in four payments of $250, each in a different pay period of 2012. You do not have to notify the IRS of the use of the periods discussed above.

Transfer of property. The above choice for reporting and withholding does not apply to a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property. For this kind of fringe benefit, you must use the actual date the property was transferred to the employee.

Withholding and depositing taxes. You can add the value of fringe benefits to regular wages for a payroll period and figure income tax withholding on the total. Or you can withhold federal income tax on the value of fringe benefits at the flat 25% rate that applies to supplemental wages. See section 7 in Publication 15 (Circular E) for the flat rate (35%) when supplemental wage payments to an individual exceed $1 million during the year.

You must withhold the applicable income, social security, and Medicare taxes on the date or dates you chose to treat the benefits as paid. Deposit the amounts withheld as discussed in section 11 of Publication 15 (Circular E).

Amount of deposit. To estimate the amount of income tax withholding and employment taxes and to deposit them on time, make a reasonable estimate of the value of the fringe benefits provided on the date or dates you chose to treat the benefits as paid. Determine the estimated deposit by figuring the amount you would have had to deposit if you had paid cash wages equal to the estimated value of the fringe benefits and withheld taxes from those cash wages. Even if you do not know which employee will receive the fringe benefit on the date the deposit is due, you should follow this procedure.

If you underestimate the value of the fringe benefits and deposit less than the amount you would have had to deposit if the applicable taxes had been withheld, you may be subject to a penalty.

If you overestimate the value of the fringe benefit and overdeposit, you can either claim a refund or have the overpayment applied to your next Form 941. See the Instructions for Form 941.

If you paid the required amount of taxes but withheld a lesser amount from the employee, you can recover from the employee the social security, Medicare, or income taxes you deposited on the employee's behalf and included on the employee's Form W-2. However, you must recover the income taxes before April 1 of the following year.

Paying your employee's share of social security and Medicare taxes. If you choose to pay your employee's social security and Medicare taxes on taxable fringe benefits without deducting them from his or her pay, you must include the amount of the payments in the employee's income. Also, if your employee leaves your employment and you have unpaid and uncollected taxes for noncash benefits, you are still liable for those taxes. You must add the uncollected employee share of social security and Medicare tax to the employee's wages. Follow the procedure discussed under *Employee's Portion of Taxes Paid*

by Employer in section 7 of Publication 15-A. Do not use withheld federal income tax to pay the social security and Medicare tax.

Special accounting rule. You can treat the value of taxable noncash benefits as paid on a pay period, quarterly, semi-annually, annually, or on another basis, provided that the benefits are treated as paid no less frequently than annually. You can treat the value of taxable noncash fringe benefits provided during the last two months of the calendar year, or any shorter period within the last two months, as paid in the next year. Thus, the value of taxable noncash benefits actually provided in the last two months of 2011 could be treated as provided in 2012 together with the value of benefits provided in the first 10 months of 2012. This does not mean that all benefits treated as paid during the last two months of a calendar year can be deferred until the next year. Only the value of benefits actually provided during the last two months of the calendar year can be treated as paid in the next calendar year.

Limitation. The special accounting rule cannot be used, however, for a fringe benefit that is a transfer of tangible or intangible personal property of a kind normally held for investment or a transfer of real property.

Conformity rules. Use of the special accounting rule is optional. You can use the rule for some fringe benefits but not others. The period of use need not be the same for each fringe benefit. However, if you use the rule for a particular fringe benefit, you must use it for all employees who receive that benefit.

If you use the special accounting rule, your employee also must use it for the same period you use it. But your employee cannot use the special accounting rule unless you do.

You do not have to notify the IRS if you use the special accounting rule. You may also, for appropriate reasons, change the period for which you use the rule without notifying the IRS. But you must report the income and deposit the withheld taxes as required for the changed period.

Special rules for highway motor vehicles. If an employee uses the employer's vehicle for personal purposes, the value of that use must be determined by the employer and included in the employee's wages. The value of the personal use must be based on fair market value or determined by using one of the following three special valuation rules previously discussed in section 3.

- The lease value rule.
- The cents-per-mile rule.
- The commuting rule (for commuting use only).

Election not to withhold income tax. You can choose not to withhold income tax on the value of an employee's personal use of a highway motor vehicle you provided. You do not have to make this choice for all employees. You can withhold income tax from the wages of some employees but not others. You must, however, withhold the applicable social security and Medicare taxes on such benefits.

You can choose not to withhold income tax on an employee's personal use of a highway motor vehicle by:

- Notifying the employee as described below that you choose not to withhold, and
- Including the value of the benefits in boxes 1, 3, 5, and 14 on a timely furnished Form W-2. For use of a separate statement in lieu of using box 14, see the Instructions for Forms W-2 and W-3.

The notice must be in writing and must be provided to the employee by January 31 of the election year or within 30 days after a vehicle is first provided to the employee, whichever is later. This notice must be provided in a manner reasonably expected to come to the attention of the affected employee. For example, the notice may be mailed to the employee, included with a paycheck, or posted where the employee could reasonably be expected to see it. You can also change your election not to withhold at any time by notifying the employee in the same manner.

Amount to report on Forms 941 (or Form 944) and W-2. The actual value of fringe benefits provided during a calendar year (or other period as explained under *Special accounting rule*, earlier in this section) must be determined by January 31 of the following year. You must report the actual value on Forms 941 (or Form 944) and W-2. If you choose, you can use a separate Form W-2 for fringe benefits and any other benefit information.

Include the value of the fringe benefit in box 1 of Form W-2. Also include it in boxes 3 and 5, if applicable. You may show the total value of the fringe benefits provided in the calendar year or other period in box 14 of Form W-2. However, if you provided your employee with the use of a highway motor vehicle and included 100% of its annual lease value in the employee's income, you must also report it separately in box 14 or provide it in a separate statement to the employee so that the employee can compute the value of any business use of the vehicle.

If you use the special accounting rule, you must notify the affected employees of the period in which you used it. You must give this notice at or near the date you give the Form W-2, but not earlier than with the employee's last paycheck of the calendar year.

How To Get Tax Help

You can get help with unresolved tax issues, order free publications and forms, ask tax questions, and get information from the IRS in several ways. By selecting the method that is best for you, you will have quick and easy access to tax help.

Internet. You can access the IRS website at IRS.gov 24 hours a day, 7 days a week to:

- *E-file* your return. Find out about commercial tax preparation and *e-file* services available free to eligible taxpayers.
- Download forms, including talking tax forms, instructions, and publications.
- Order IRS products online.
- Research your tax questions online.
- Search publications online by topic or keyword.
- Use the online Internal Revenue Code, regulations, or other official guidance.
- View Internal Revenue Bulletins (IRBs) published in the last few years.
- Sign up to receive local and national tax news by email.
- Get information on starting and operating a small business.

Phone. Many services are available by phone.

- *Ordering forms, instructions, and publications.* Call 1-800-TAX-FORM (1-800-829-3676) to order current-year forms, instructions, and publications, and prior-year forms and instructions. You should receive your order within 10 days.
- *Asking tax questions.* Call the IRS Business and Specialty Tax Line with your employment tax questions at 1-800-829-4933.
- *Solving problems.* You can get face-to-face help solving tax problems every business day in IRS Taxpayer Assistance Centers. An employee can explain IRS letters, request adjustments to your account, or help you set up a payment plan. Call your local Taxpayer Assistance Center for an appointment. To find the number, go to *www.irs.gov/localcontacts* or look in the phone book under *United States Government, Internal Revenue Service.*
- *TTY/TDD equipment.* If you have access to TTY/TDD equipment, call 1-800-829-4059 to ask tax questions or to order forms and publications.
- *TeleTax topics.* Call 1-800-829-4477 to listen to pre-recorded messages covering various tax topics.

Evaluating the quality of our telephone services. To ensure IRS representatives give accurate, courteous, and professional answers, we use several methods to evaluate the quality of our telephone services. One method is for a second IRS representative to listen in on or record random telephone calls. Another is to ask some callers to complete a short survey at the end of the call.

Walk-in. Many products and services are available on a walk-in basis.

- *Products.* You can walk in to many post offices, libraries, and IRS offices to pick up certain forms, instructions, and publications. Some IRS offices, libraries, grocery stores, copy centers, city and county government offices, credit unions, and office supply stores have a collection of products available to print from a CD or photocopy from reproducible proofs. Also, some IRS offices and libraries have the Internal Revenue Code, regulations, Internal Revenue Bulletins, and Cumulative Bulletins available for research purposes.
- *Services.* You can walk in to your local Taxpayer Assistance Center every business day for personal, face-to-face tax help. An employee can explain IRS letters, request adjustments to your tax account, or help you set up a payment plan. If you need to resolve a tax problem, have questions about how the tax law applies to your individual tax return, or you are more comfortable talking with someone in person, visit your local Taxpayer Assistance Center where you can spread out your records and talk with an IRS representative face-to-face. No appointment is necessary—just walk in. If you prefer, you can call your local Center and leave a message requesting an appointment to resolve a tax account issue. A representative will call you back within 2 business days to schedule an in-person appointment at your convenience. If you have an ongoing, complex tax account problem or a special need, such as a disability, an appointment can be requested. All other issues will be handled without an appointment. To find the number of your local office, go to *www.irs.gov/localcontacts* or look in the phone book

under *United States Government, Internal Revenue Service.*

Mail. You can send your order for forms, instructions, and publications to the address below. You should receive a response within 10 days after your request is received.

Internal Revenue Service
1201 N. Mitsubishi Motorway
Bloomington, IL 61705-6613

Taxpayer Advocate Service. The Taxpayer Advocate Service (TAS) is your voice at the IRS. Our job is to ensure that every taxpayer is treated fairly, and that you know and understand your rights. We offer free help to guide you through the often-confusing process of resolving tax problems that you haven't been able to solve on your own. Remember, the worst thing you can do is nothing at all.

TAS can help if you can't resolve your problem with the IRS and:

- Your problem is causing financial difficulties for you, your family, or your business.
- You face (or your business is facing) an immediate threat of adverse action.
- You have tried repeatedly to contact the IRS but no one has responded, or the IRS has not responded to you by the date promised.

If you qualify for our help, we'll do everything we can to get your problem resolved. You will be assigned to one advocate who will be with you at every turn. We have offices in every state, the District of Columbia, and Puerto Rico. Although TAS is independent within the IRS, our advocates know how to work with the IRS to get your problems resolved. And our services are always free.

As a taxpayer, you have rights that the IRS must abide by in its dealings with you. Our tax toolkit at *www.TaxpayerAdvocate.irs.gov* can help you understand these rights.

If you think TAS might be able to help you, call your local advocate, whose number is in your phone book and on our website at *www.irs.gov/advocate*. You can also call our toll-free number at 1-877-777-4778.

TAS also handles large-scale or systemic problems that affect many taxpayers. If you know of one of these broad issues, please report it to us through our Systemic Advocacy Management System at *www.irs.gov/advocate*.

Free tax services. Publication 910, IRS Guide to Free Tax Services, is your guide to IRS services and resources. Learn about free tax information from the IRS, including publications, services, and education and assistance programs. The publication also has an index of over 100 TeleTax topics (recorded tax information) you can listen to on the telephone. The majority of the information and services listed in this publication are available to you free of charge. If there is a fee associated with a resource or service, it is listed in the publication.

Accessible versions of IRS published products are available on request in a variety of alternative formats for people with disabilities.

DVD for tax products. You can order Publication 1796, IRS Tax Products DVD, and obtain:

- Current-year forms, instructions, and publications.
- Prior-year forms, instructions, and publications.
- Tax Map: an electronic research tool and finding aid.
- Tax law frequently asked questions.
- Tax Topics from the IRS telephone response system.
- Internal Revenue Code—Title 26 of the U.S. Code.
- Links to other Internet based Tax Research materials.
- Fill-in, print, and save features for most tax forms.
- Internal Revenue Bulletins.
- Toll-free and email technical support.
- Two releases during the year.
  – The first release will ship the beginning of January 2012.
  – The final release will ship the beginning of March 2012.

Purchase the DVD from National Technical Information Service (NTIS) at *www.irs.gov/cdorders* for $30 (no handling fee) or call 1-877-233-6767 toll free to buy the DVD for $30 (plus a $6 handling fee).

Index

To help us develop a more useful index, please let us know if you have ideas for index entries. See "Comments and Suggestions" in the "Introduction" for the ways you can reach us.

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Morgan County Population Growth:
Census 2000 to Census 2010

According to Morgan County Census 2010 results, the population of the area was approximately

17,541 people.

From 2000 to 2010, the Morgan County population growth percentage was 17.4%

(or from 14,943 people to 17,541 people).

Morgan County – Some Key Statistics

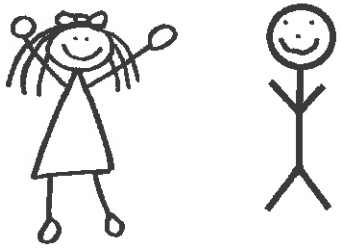
The land mass of Morgan County is 228.98 square miles

The population per square mile is 76.6

Housing Units
9,753

77.5% are occupied

Average Persons Per Household
2



SERVICE AGREEMENT

This Service Agreement ("Agreement"), effective this _____ day of _____, 2012, is made between Morgan County, WV (Client) and Aio Recovery, LLC, 11210 Asheville Hwy, Inman, SC 29349 (Aio Recovery), a South Carolina Limited Liability Company.

SCOPE OF SERVICES

1. Client authorizes Aio Recovery to review/audit of the following areas:

	Initialed:
[ ] Telecommunications	_____
[ ] Cable	_____
[ ] Electric	_____
[ ] Gas	_____
[ ] Waste	_____
[ ] Insurance	_____
[ ] Workers' Compensation	_____
[ ] Credit Card Processing	_____
[ ] other: _____	_____

for prior billing errors, improvements and/or cost savings. This review will include an analysis of existing systems, services, equipment, suppliers and plans. In view of the substantial effort and costs expended by Aio Recovery in performing such review/audit, Client agrees to provide Aio Recovery with a complete list of any changes, additions, or reductions in current vendor services currently planned or under consideration, prior to initiation of Aio Recovery's review/audit. Similarly, except for those so disclosed to Aio Recovery, Client agrees to make no changes to its plans or systems during Aio Recovery's review/audit. Scope of the audit includes: taxes and regulatory fees, contracts and invoices for the above selected areas.

2. Cost savings may be realized from:
   a) Refunds and ongoing savings as a result of errors and overcharges found in historical bills.
   b) Eliminating or reducing charges for items that are unnecessary and do not affect service.
   c) Negotiating or assisting Client in negotiating, a more cost effective plan with another supplier, and/or your current supplier.
   d) Savings arising, directly or indirectly, from Aio Recovery recommendations for other changes implemented by Client.

3. The Client hereby authorizes Aio Recovery to pursue cost savings identified above without impacting the Client's operations. While Aio Recovery, with the prior permission of Client, will pursue changing providers, the Client is not required under any circumstances to change vendors. Any recommendations used by Client to implement changes within twenty-four months of submission by Aio Recovery shall be deemed accepted by the Client and the corresponding fee as set forth in Section 8 of this Agreement (40% of any credits, refunds and savings realized) shall be due and payable to Aio Recovery. In addition, recommendations for one location are applicable to all locations.
Because of the speed with which pricing changes may occur, the Client will have 30 days after it receives the audit report to advise Aio Recovery on whether it accepts or rejects Aio Recovery's recommendations. All decisions regarding Aio Recovery's recommendations are made unilaterally at the discretion of the Client. If Client elects not to implement an Aio Recovery recommendation, Client shall not implement said recommendations for one year after this Agreement terminates, without compensating Aio Recovery as per this Agreement.

4. **Client Exclusions:** Client acknowledges that there are no negotiations in process with any service providers for credits, refunds or changes in any rates that result in savings to Client except for the specific issues listed below. Client acknowledges that there are no savings opportunities under study or in the process of being implemented except for the specific issues listed below. Issues NOT listed here that are on Aio Recovery audit reports, faxes or emails shall be considered Aio Recovery recommendations.

a) _____ _____
Initials

b) _____ _____
Initials

5. The Client represents that it is not currently under contract with and will not engage another firm or individuals to perform bill auditing and consulting services as agreed to hereunder during the term of this Agreement, including internal review of its telecommunications, waste and/or utility systems. If Client engages any other firm to perform bill auditing and/or consulting services, or undertakes an internal review/audit of its telecommunications or utility systems in violation of this Agreement, Client shall pay to Aio Recovery 40% of any credits, refunds and savings realized as if such credits, refunds and savings had been obtained by Aio Recovery.

6. The Client will provide/or provide access to Aio Recovery all the items necessary to complete audit.

7. Aio Recovery shall hold all Client records and information submitted for review in the strictest confidence and all of its recommendations, actions and suggestions submitted to the Client in the strictest confidence.

PAYMENT TERMS

8. The Client agrees to pay Aio Recovery 40% of the savings achieved from Aio Recovery's review of all accounts in selected audit areas.

a) Amounts due resulting from one-time historical refunds or adjustments will be billed by Aio Recovery and shall be paid by Client within ten days of the date Client receives refund from the supplier.

b) Amounts due as a result of ongoing savings from Item 2 above will be billed by Aio Recovery and paid by Client in twenty four monthly installments during the twenty four months following the implementation of changes that the Client agreed upon.

c) All payments are due to Aio Recovery within thirty days of invoice date. Payments received after due date are subject to late fees of 2% of unpaid balance or $25.00, whichever is greater. Customer's payment obligations may extend beyond the end date of this Agreement.

If the Client does not receive a refund, credit or cost reduction, there will be no fee due Aio Recovery.

9. Client has the right to terminate this Agreement at any time upon thirty days written notice to Aio Recovery, LLC. Provided, if Client terminates this Agreement after Aio Recovery, LLC has performed the audit recommending areas of savings, Aio Recovery, LLC shall be deemed to have earned the compensation set forth in this Agreement, and Client shall pay Aio Recovery, LLC the entire amount for the entire payment period due under the contract.

COMPLETE AGREEMENT - JURISDICTION

10. Both parties agree that this Agreement is final and all-inclusive and cannot be amended unless agreed to in writing by both parties. It is agreed that the law of West Virginia shall apply in the event of any dispute and both parties agree to the personal jurisdiction of the courts of Morgan County, WV. In the event of a dispute, the losing party shall pay court costs and legal fees.

DISPUTE RESOLUTION

11. Should there be any controversy, dispute or claim, lying either in contract or tort and arising out of or in connection with this Agreement (hereinafter a "dispute" or "disputes"), the Parties shall first attempt to settle the matter by mutual negotiations. If these negotiations are unsuccessful, or if it appears to either Party that negotiations are stalled, the dispute must be submitted to mediation to be held in Morgan County, WV. In the event the parties cannot resolve any disputes in mediation, the Parties agree that all disputes between themselves regarding any aspect of performance by either Party, any dispute regarding the interpretation of this Agreement or any dispute regarding compliance of either Party with the terms of this Agreement, shall be resolved through binding arbitration. The arbitration shall be held in Morgan County, WV. Unless the Parties agree otherwise, the American Arbitration Association shall administer any arbitration commenced pursuant to this Agreement and shall apply its Commercial Arbitration Rules.

The Parties agree and acknowledge that this Agreement, and the transactions contemplated hereby, involves interstate commerce. The parties agree further that this Agreement shall be governed by the Federal Arbitration Act, 9 U.S.C. § 1, et. seq.

In the event of arbitration, litigation or other legal action relating to the enforcement of rights under this Agreement, the substantially prevailing party shall be entitled to recover all expenses related to such arbitration, litigation or other legal action, including attorneys' fees and costs, from the non-prevailing party.

SUCCESSORS & ASSIGNS

12. This Agreement shall be binding upon any successors or assigns of Client, including any purchaser of the stock of Client or the telecommunications, waste or utility assets of Client.

AGREED TO AND ACCEPTED:

Client	Aio Recovery, LLC
_____ Client Name	
_____ Address	
_____ Address	
_____ Signature of Authorized Client Representative	_____ Signature
_____ Print Name	_____ Print Name
_____ Title	_____ Title
_____ Date	_____ Date

Account Executive:_____

Morgan County
West Virginia

LETTER OF AUTHORIZATION
Telecom, Utilities, Waste, Insurance

TO: All concerned Utility Companies, Municipalities, Water Agencies, Sewer Agencies, ESP's, Consultants, Independent Contractors, Telephone and Internet Companies, Cable and Satellite Companies, Property Owners, VAR's, Equipment Vendors, Waste Haulers, Shredding Services, Insurance, Bio-Waste Haulers, Recyclers and Purchasing Groups

Dear Sirs:

Please be advised that Aio Recovery is hereby engaged and authorized to act as agent and consultant for the undersigned in all matters pertinent to our services with your company.

By this letter we authorize Aio Recovery to perform the following, but not limited to: request new service, cancel and/or transfer existing service, place service orders, set up and/or request log-on information pertaining to online account access, request billing records, request equipment records, request and receive rate analysis, change rate schedules, and obtain any other information pertaining to our account with your company. It is understood that Aio Recovery will treat this information as proprietary and confidential and will not release it to others in any manner.

We release any concerned utilities or vendors from any claims, damages or expenses resulting from unauthorized use of this information by Aio Recovery. We ask that you give full cooperation and compliance to all requests from Aio Recovery. This letter shall supersede all previous Letters of Authorization prior to the above date, thereby canceling their terms and conditions. This agency shall remain in effect for three years from date of signature.

Please forward a copy of our current vendor agreement to:

Paula Fancher **paula.fancher@aiorecovery.com**

We appreciate your prompt response to this request. If you have any questions regarding this request, please forward all inquiries to Aio Recovery, LLC and we will be happy to respond.

Authorized Signature_____
Printed Name_____
Title _____
Federal ID # _____
Date _____

MORGAN COUNTY ADMINISTRATOR

Jody McClintock

77 Fairfax Street, Room 101

Berkeley Springs, WV 25411

Phone: (304)867- 3131 Fax: (304)258-7305

jmcclintock@morgancountywv.gov

August 2, 2012

Dear Morgan County Commission:

In May 2011, select Morgan County officials and employees formed a Criminal Corrections Committee. The committee has been meeting monthly to review the Regional Jail Bill and seek alternative sentencing options. These options include utilization of the Berkeley/Jefferson Day Report Center on a per diem basis, and utilization of the community service program. The community service workers previously reported to Deputy Wade Shambaugh and were monitored as part of the deputy's regular duties. In order to better manage the program and take some of the onus off the sheriff deputies, the committee hired a community service officer with funding from an Edward J. Byrnes Justice Assistance grant. The funding via the JAG grant program is no longer available to Morgan County.

In order to continue funding the community service program and to allow Morgan County to qualify for future grant funds, the committee would like to move forward by forming a Criminal Justice Board. Becoming a board would allow the county to charge fees to those utilizing the community service program, and it would open the doors to us to apply for different avenues of grant funds.

According to the WV Code Section 62-11C-6, three members at large and one member with a background in mental health care and services are to be appointed by the County Commission. At this time, the Criminal Corrections Committee asking if you would be agreeable to appointing a Morgan County citizen to this board.

The committee is planning to meet again on Tuesday, August 14th at 11am in the commission meeting room if you would like to attend.

We appreciate your consideration and timely response regarding your designated appointee. Please contact me at the number above with any questions.

Thank you,

Jody McClintock

Jody McClintock