

FEDERAL STATE AND LOCAL GOVERNMENTS

SECTION 218 COVERAGE

Fran Reina, IRS FSLG Specialist

Cynthia Webster, Vermont State
Social Security Administrator

Prepared by:
SSA Administration

1

Key Dates

- ⌘1951 - States may cover employees not covered by a retirement system
- ⌘1951 – State of Vermont employee coverage begins
- ⌘1955 - States may extend coverage to employees covered by a retirement system

Current Status of Public Employees

- ⌘ Employees not covered by a retirement system are covered for Social Security and Medicare
 - under a Section 218 Agreement or
 - mandatorily under Federal law (with certain exceptions)

Property of U.S. Government

7

Current Status of Public Employees

- ⌘ Employees covered by a retirement system may be:
 - covered for Social Security and Medicare under a 218 Agreement
 - not covered for Social Social Security and Medicare
 - covered for Medicare only

Property of U.S. Government

8

Basic Concepts of Section 218 Coverage

- ⌘ Coverage is voluntary and obtained through a legal written Agreement between State and SSA
- ⌘ Must be legal authority under both Federal and State law to enter into Agreement
- ⌘ Types and extent of coverage must be consistent with Federal and State laws

Property of U.S. Government

9

Basic Concepts (Con't)

- ⌘ Agreements cover positions, therefore, any worker filling that position is covered
- ⌘ Employees brought under 218 Agreement in groups known as "coverage groups"
- ⌘ Additional coverage provided by modifications to the Agreement
- ⌘ Each modification, like the original Agreement, is a legal document

Property of U.S. Government

10

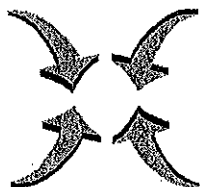
Basic Concepts (Con't)

- ⌘ Each State determines which groups of employees to cover and when coverage begins
- ⌘ Coverage cannot be terminated

Section 218 Agreement

- ⌘ Section 218 of the Social Security Act prescribes in detail how coverage may be provided, for whom and under what conditions.
- ⌘ Original Section 218 Agreement outlines basic provisions, definitions and conditions

Interstate Instrumentality



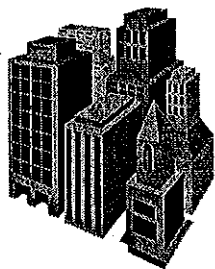
An independent legal entity organized by two or more States to carry on some function of government. For Section 218 purposes, an interstate instrumentality has the status of a State.

☞ Ex: Port Authority of New York and New Jersey

Property of U.S. Government

18

To What Entities Can a Section 218 Agreement Apply?



☞ The agreement can apply to employees of the State, to employees of the State and any one or more political subdivisions, or to employees of any one or more political subdivisions.

Property of U.S. Government

20

Exclusions--Mandatory and Optional

- ⌘ Mandatory exclusions--Federal law mandatorily excludes certain services from Section 218 coverage
- ⌘ Optional exclusions--Federal law gives the State the option to include or exclude certain services from coverage under the State's agreement

Property of U.S. Government

35

Mandatory Exclusions

- ⌘ Individuals hired solely to be relieved from unemployment
- ⌘ Services performed in a hospital, home or other institution by a patient or inmate thereof
- ⌘ Workers hired temporarily to handle disaster emergencies

Property of U.S. Government

36

Mandatory Exclusions (Con't)

- ⌘ Transportation system employees who are covered mandatorily under Section 210(k) of the Act
- ⌘ Non-resident aliens with F-1, J-1, M-1 or Q-1 visas

Agreements and Modifications

- ⌘ The original Agreement provides the framework for future coverage, which is obtained by modifications to the Agreement.
- ⌘ Since all States have executed Agreements, future agreements will be for interstate instrumentalities.

What a Modification Is

⌘ A modification is a written agreement between the State and SSA to make the original Agreement applicable to employee positions not previously covered, or to modify the original Agreement in some other respect.

When a Modification Is Needed

- ⌘ Implement changes in the law
- ⌘ Provide coverage for retirement systems
- ⌘ Cover new entities (libraries, water districts) not covered by a retirement system
- ⌘ Cover services optionally excluded
(Ex: part-time positions)

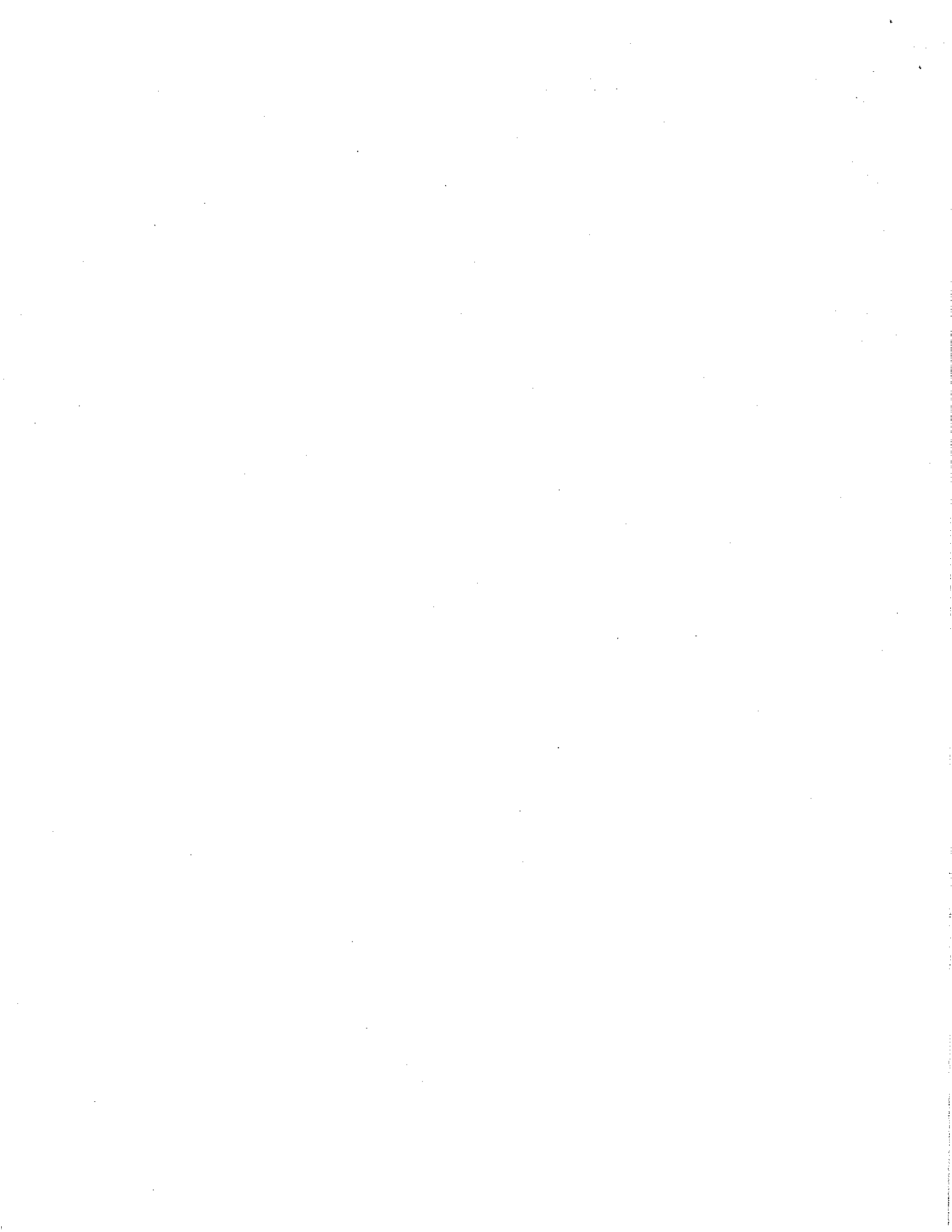
When Modification Is Needed (Con't)

- ⌘ Provide Medicare only coverage for pre-1986 hires
- ⌘ Increase threshold amount for election worker services
- ⌘ Exclude election worker services
- ⌘ Identify new entities that join a State retirement system

Contacts

Cynthia Webster, Vermont SSSA
(802) 828-2305
cwebster@tre.state.vt.us

Fran Reina
(315) 793-8171
francis.g.reina@irs.gov



IRS TAX PUBLICATIONS

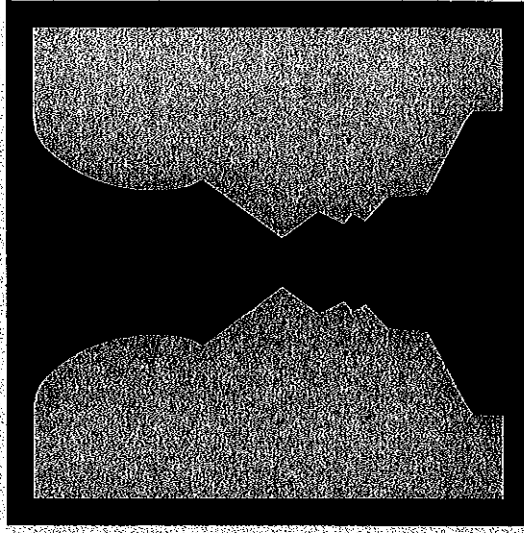
If you are not sure whether you are an employee or an independent contractor, get Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Publication 15-A, *Employer's Supplemental Tax Guide*, provides additional information on independent contractor status.

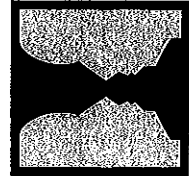
IRS ELECTRONIC SERVICES

You can download and print IRS publications, forms, and other tax information materials on the Internet at www.irs.gov. You can also call the IRS at 1-800-829-3676 (1-800-TAX-FORM) to order free tax publications and forms.

Publication 1796, *2007 IRS Tax Products CD (Final Release)*, containing current and prior year tax publications and forms, can be purchased from the National Technical Information Service (NTIS). You can order Publication 1796 toll-free by calling 1-877-233-6767 or via the Internet at www.irs.gov/cdorders.

Call 1-800-829-4933, the Business and Speciality Tax Line, if you have questions related to employment tax issues.





INDEPENDENT CONTRACTOR OR EMPLOYEE

Which are you?

For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for employer and social security and Medicare benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now. This brochure can help you.

The courts have considered many facts in deciding whether a worker is an **independent contractor** or an **employee**. These relevant facts fall into three main categories: *behavioral control*; *financial control*; and *relationship of the parties*. In each case, it is very important to consider all the facts – no single fact provides the answer. Carefully review the following definitions.

BEHAVIORAL CONTROL

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

- **Instructions** – if you receive extensive instructions on how work is to be done, this suggests that you are an employee. Instructions can cover a wide range of topics, for example:
 - how, when, or where to do the work
 - what tools or equipment to use

- what assistants to hire to help with the work
- where to purchase supplies and services

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an **independent contractor**. For instance, instructions about time and place may be less important than directions on how the work is performed.

- **Training** – if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an **employee**.

FINANCIAL CONTROL

These facts show whether there is a right to direct or control the business part of the work. For example:

- **Significant Investment** – if you have a significant investment in your work, you may be an **independent contractor**. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an **independent contractor**.
- **Expenses** – if you are not reimbursed for some or all business expenses, then you may be an **independent contractor**, especially if your unreimbursed business expenses are high.
- **Opportunity for Profit or Loss** – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an **independent contractor**.

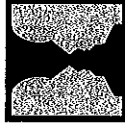
RELATIONSHIP OF THE PARTIES

These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** – if you receive benefits, such as insurance, pension, or paid

leave, this is an indication that you may be an **employee**. If you do not receive benefits, however, you could be either an **employee** or an **independent contractor**.

- **Written Contracts** – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.



When You Are an Employee

- Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, *Wage and Tax Statement*, showing the amount of taxes withheld from your pay.

- You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.



When You Are an Independent Contractor

- The business may be required to give you Form 1099-MISC, *Miscellaneous Income*, to report what it has paid to you.
- You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act – SECA). The business does not withhold taxes from your pay. You may need to make estimated tax payments during the year to cover your tax liabilities.
- You may deduct business expenses on Schedule C of your income tax return.

FORM 1099 MISC REMINDERS

WHO MUST FILE

Any entity conducting a trade or business is required to file Form 1099. Government Agencies and non-profit organizations are also required to file Form 1099.

SECURING VENDOR INFORMATION: INFORMATION NEEDED

- Owner's Name (if sole proprietor)
- Legal Business Name,
- Mailing Address
- Taxpayer Identification Number

WHEN TO GET INFORMATION

Obtain vendor information up front; don't wait until year-end. Forms 1099 are required to be issued once payments total \$600 or more.

WHY GET THE INFORMATION

If your vendor fails to supply an identification number, you must withhold 28% and pay it to the IRS on Form 945. This is called BACKUP WITHHOLDING TAX. If you do not backup withhold, you may be liable for this tax.

HOW TO GET THE INFORMATION

Form W9 or substitute

DUE DATES FOR FORMS 1099

Copy sent to RECIPIENTS by January 31st
Copy A to IRS by February 28th

DON'T

Payments of \$600 or more FOR:

- Products
- Workmen's Compensation
- Telephone

Payment of \$600 or more TO:

- Governmental Agencies
- Rental Agencies
- Corporations
- (Except MEDICAL & ATTORNEYS)

Payments of \$600 or more FOR:

- Services (Form 1099 MISC)
- Rents (Form 1099 MISC)

Payment of \$600 or more TO:

- Individuals
- Partnerships
- Estates & Trusts
- All Medical and Legal Payments

CAUTION Do NOT automatically treat a payee as a corporation simply because the payee's name ends with company, "Co", LLC or LLP

EXAMPLES OF REPORTABLE PAYMENTS

NON-EMPLOYEE COMPENSATION (Form 1099 MISC Box 7) **MEDICAL & HEALTH CARE SERVICES (1099 MISC Box 6 Includes Corporations)**

- | | |
|--|--|
| <ul style="list-style-type: none"> Advertising Auto Repair Construction Custodial / Maintenance Landscapers, Locksmiths Photographers, Printing Services Professional Services Accountants Appraisers Attorneys Consultants Engineers Referees Rubbish Removal | <ul style="list-style-type: none"> Ambulance Services Dentists Doctors For-Profit Hospitals Lab Services Optometrists Private Duty Nurses Psychiatrists, Psychologists Rehabilitation Centers Therapists |
|--|--|

RENTS (Form 1099 MISC Box 1)

- Office Space
- Parking Lot Space
- Welfare Rental Assistance (to Landlords)

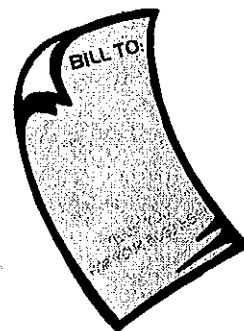
Accountable v. Nonaccountable Plans

Methods of Reimbursing Employees for Expenses

Accountable Plans

A plan under which an employee is reimbursed for expenses or receives an allowance to cover expenses is an *accountable* plan **only** if the following conditions are satisfied:

- there must be a business condition for the expenses;
 - the expense must be in connection with performance of services as an employee
 - the reimbursement must be for an expense the employee could deduct on his/her tax return
- the employee must either substantiate or be deemed to have substantiated the expenses;
 - Generally substantiation consists of receipts and/or cancelled checks and invoices that show the nature and amount of the expenditure
 - Expenses deemed to have been substantiated are such things as using the mileage allowance rate (51 cents per mile) rather than actual expenses for operating a vehicle or use of a per diem rate for overnight travel rather than requiring receipts for meals
- the employee must return to the employer amounts in excess of the substantiated (or deemed substantiated) expenses within a reasonable time
 - there are 2 methods of determining a reasonable time
 - Periodic Statement
 - a statement from the employer is given to the employee at **least** quarterly setting forth the amounts paid under the plan in of the substantiated amount and requesting the employee either substantiate or return excess amounts within 120 days of the statement date
 - Fixed Date
 - Advance Payments – 30 days before the reasonably anticipated expenses are paid or incurred
 - Substantiation – 60 days after expenses are paid or incurred
 - Return of excess amounts – 120 days after expenses are paid or incurred



Amounts paid under accountable plans are not income to the employee and are not shown on Form W-2.

Remember that all of the requirements must be met in order for it to be an accountable plan!

Nonaccountable Plan

A nonaccountable plan is a reimbursement plan or policy which does not meet all the requirements for an accountable plan.

Amounts paid under a nonaccountable plan are income to the employee and must be included in wages with appropriate tax withholdings.

An employer can have an accountable plan for some items, and a nonaccountable plan for others.