



# TAX GUIDANCE MANUAL

[taxservices.wvu.edu](http://taxservices.wvu.edu)

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# I. Purpose

The West Virginia University Tax Services Unit (“Tax Services”) has prepared this guidance manual as an informational tool for West Virginia University (“WVU” or “University”) employees, students, vendors, and contractors. The material contained herein does not cover all tax situations and should not be viewed as a complete treatment of all tax questions. This manual is not intended to provide legal or tax advice but is instead intended to provide the University’s position on the tax treatment of various items. For additional guidance, please reference the Internal Revenue Code and Regulations and the Internal Revenue Service’s website ([www.irs.gov](http://www.irs.gov)). It is the intent of Tax Services to comply with all applicable IRS guidelines and regulations.

For additional information or clarification, please contact Melissa Hunt, Assistant Director of Tax Services, at (304) 293-0467. Tax Services cannot give advice regarding individual income tax situations for students or University faculty or staff. If these questions arise, the individuals should consult with a tax advisor and/or attorney.

# II. Definitions

- ✓ **Articles of Clothing** – For purposes of this guidance, articles of clothing includes any item that can be worn on the body including, but not limited to, hats, shirts, jackets, pants, socks, shoes, boots, dresses, skirts, hoodies, glasses, gloves, safety equipment, lab coats, chef jackets, masks, etc.
- ✓ **ATAX** –Tax withheld pursuant to IRS guidelines on payments made to foreign vendors who are considered non-resident aliens for income tax purposes. This is also referred to as the Alien Tax.
- ✓ **Benefit Eligible Employee** – An employee that is eligible for programs the University uses to supplement the cash compensation of Employees including health plans, retirement plans, and pay for hours not worked.
- ✓ **Bona Fide Business Purpose** – For purposes of this guidance, a “bona fide business purpose” exists when you can prove a real business purpose for an individual’s presence. A bona fide business purpose means that the presence of an employee guest is essential and not merely beneficial to the employee being able to carry out their business purpose for the University. Employee guest duties cannot be merely incidental to the business purpose. The employee guest’s performance of some incidental service does not make it a bona fide business expense.
- ✓ **Cash Equivalent** – Checks, gift certificates, gift cards, use of a charge card or credit card, etc.
- ✓ **De Minimis** – Property or service provided to an employee that has so little value that accounting for it would be unreasonable or administratively impracticable.

**Note:** IRS guidelines do not provide a specific dollar value for non-cash de minimis items. The University has elected to apply a \$100 de minimis value to non-cash items.

- ✓ **Employee Guests** – Includes, but is not limited to, the employee’s spouse, partner, child, other related family member, and/or other guest present at the request of the employee and/or only because of the employee’s presence at an event.
- ✓ **Employer Provided Educational Assistance** – Funding provided to an employee for schooling. The funding can be in the form of a waiver, grant, scholarship, or any other type of gift aid that is paid for using University funds including, but not limited to, State, Foundation, and Research funds.
- ✓ **FICA (Federal Insurance Contribution Act) Tax** –Social Security and Medicare taxes. These taxes are withheld from an employee’s pay and matched by the University.
- ✓ **Fringe Benefits** – Any form of pay or extra benefit provided in connection with an individual’s performance of services including services performed in the course of employment. Fringe benefits are in addition to the individual’s stated or agreed upon pay and are considered taxable income by the IRS unless specifically excluded under tax law. Examples of commonly provided fringe benefits include, but are not limited to the following: employer provided vehicles; moving reimbursements or payments; house hunting trips; employer provided educational assistance; housing and/or lodging; tickets to events; equipment such as iPads, laptops etc., that are not be considered University property; clothing, unless specifically approved as a uniform or de minimis in value; club dues and memberships; benefits provided on behalf of an employee to someone other than the employee; gift cards regardless of the dollar amount; tangible awards, prizes and gifts above a de minimis value.
- ✓ **Gift Aid** – Funding provided to a student for schooling and other educational related expenses that do not require repayment by the student.
- ✓ **Non-Benefit Eligible Employee** – An individual working in either a Mountaineer Temp position or a less than 0.53 FTE position that is not eligible for employee benefits such as retirement and health insurance.
- ✓ **Student** – Individual enrolled in classes for credit and pursuing a degree at WVU.
- ✓ **Student Worker Employee** – An individual working in a position with the following characteristics:
  - Was hired into a position defined by Human Resources as a student position or by Academic Affairs as an undergraduate or graduate student teaching or research assistant;
  - Is not eligible to participate in the University’s retirement plans;
  - Is not eligible for the University’s fringe benefit plan (medical, dental, etc.); and
  - Is not eligible for federal or state unemployment benefits.
- ✓ **Tangible Gifts** – Any non-cash item provided to an employee including, but are not limited to, plaques, trophies, mugs, fruit baskets, gift baskets, athletic bowl or tournament related items, championship rings or related items, personal vacations, and non-uniform articles of clothing.

## **Unrelated Business Income (UBI)** – Income generated from an activity that:

- Is a trade or business;
- Is regularly carried on; and
- Is not substantially related to furthering the exempt purpose of the organization.

# **III. Guidance**

## **1. Alien Tax on Gift Aid to Foreign Students**

**1.1.** Individuals who are considered nonresident aliens for income tax purposes, and who are awarded gift aid from any U.S. source, are subject to ATAX on the amounts received in excess of their qualified educational expenses. Gift aid received that is either applied against a nonqualified expense or refunded to the individual will be subject to ATAX at a rate of 30%, 14% or 0%. The 30% rate is applied to all individuals who fail to provide Tax Services with the requested documentation including their current Visa status. The 14% rate is the standard ATAX rate. When applicable, the 14% withholding rate can be reduced to 0% based on tax treaty benefits available. See, IRS Publication 515 for more information.

**1.2.** Tax Services will review the individual's student account at least four times during the calendar year to determine the gift aid received and any ATAX due. ATAX due will be assessed to the individual's student account in the same manner as other University charges. All individuals who are assessed ATAX during the calendar year will receive a Form 1042-S at the end of the calendar year in accordance with the IRS guidelines.

## **2. Athletic and Event Tickets**

**2.1.** Event tickets, parking passes for events, food and beverages provided at events, and travel related expenses are considered taxable benefits to the employee and will be included in the employee's gross wages with the applicable income taxes withheld. See, IRS Publication 525 for more information.

**2.2. Job Related Attendance** – For employees who are required to attend an event as part of their assigned job duties, the following will not be considered taxable benefits to the employee:

- **2.2.1.** The value of one (1) ticket provided to an employee who is required as part of their job duties to attend the event, and who is provided the ticket to permit entrance into the event.
- **2.2.2.** Travel expenses incurred by an employee as part of their job duties to attend an away event. See the WVU & WVURC Travel Manual for additional information.

**2.3. Employee Guests** – Additional season or individual tickets, food and beverages, and any travel related expenses provided to a guest of an employee will be considered a taxable benefit to the employee unless the employee guest is present with a documented bona fide business purpose.

**2.4. Occasional or Non-Sellout Events** – Tickets provided to an occasional event or to a non-sellout event will be considered a gift if all of the following criteria are met:

- **2.4.1.** The tickets are not provided for job related purposes;
- **2.4.2.** The tickets are unsold tickets to an event that are made available to all employees on a first come, first serve basis at an event gate no earlier than one (1) business day before the start of the event; and
- **2.4.3.** The tickets are provided on a one-time basis and the employee does not receive additional tickets for other events on a regular or routine basis.

See the “Gift and Miscellaneous Benefits” guidance for additional information related to the taxability of gifts.

### **3. Club and Membership Dues**

**3.1.** Memberships provided to employees for country clubs, athletic facilities, health and similar clubs are considered a taxable benefit to the employee and will be included in the employee’s gross wages with the applicable income taxes withheld. Such memberships are not excludable as a de minimis benefit. See, IRS Pub. 5137.

**3.2. Exception – Employment Related Memberships** - Employment related memberships in professional organizations are not considered taxable benefits to the employee. For example, membership dues paid by the University to the Association of International Certified Professional Accountants (AICPA) for an employee who is a certified public accountant (CPA) is not considered a taxable benefit to the employee. See, IRS Pub. 5137.

### **4. Employee Versus Independent Contractor**

**4.1.** The University’s Tax Services Unit is responsible for ensuring the proper classification of service providers as either employees or independent contractors. This Unit is responsible for reviewing the Independent Contractor Determination forms submitted on all proposed contracts with independent contractors to ensure proper classification.

**4.2.** It is the responsibility of the Department that plans to engage the potential independent contractor to obtain the required documentation including the completed Independent Contractor Determination form and submit such documentation to the Tax Services Unit for review and approval prior to any services being performed by the individual.

**4.3.** The University will classify all workers as employees unless specific requirements related to the worker’s business relationship with the University are met as determined by a thorough review of each potential contract and Independent Contractor Determination form.

**4.4.** Although there is no bright line test for distinguishing an independent contractor from an employee, the Internal Revenue Service has issued what is commonly known as the “[20-point Common Law Test](#).” This test provides guidance on proper classification of a worker based on many

factors such as the degree of supervision, amount and method of payment, and general business relationship. See, IRS Pub. 15-A.

**4.5. Research Test Subjects** – Because of the temporary and unique aspects of payments made to test subjects used for research projects, these individuals are classified as independent contractors and do not require a completed Independent Contractor Determination form for payment.

**4.5.1.** All payments made to WVU employees for services rendered must be paid through payroll and cannot be paid as an independent contractor, including payments as test subjects.

## **5. Employer Provided Vehicles**

**5.1.** Employees who operate employer provided vehicles will be taxed on the personal use of such vehicles. See, IRS Pub 5137 for more information. It is the responsibility of the employee to maintain a detailed mileage log indicating the following:

- **5.1.1.** Day and time of trip;
- **5.1.2.** To and from destination;
- **5.1.3.** Total mileage driven; and
- **5.1.4.** Whether the trip was personal or business related.

**5.2.** Employees who operate employer provided vehicles are not eligible to receive expense reimbursement for the business use of such vehicles.

**5.3.** Employees who charge gasoline to the University while operating an employer provided vehicle will have the value of such gasoline included within their Form W-2 to the extent of personal use.

**5.4.** West Virginia University uses the lease-valuation method to value the use of the employer provided vehicles. Under this method, the value of the personal use miles is determined by multiplying the percentage of the personal miles driven by the appropriate value specified in the Annual Lease Value Table found in Treasury Regulation 1.61-21(d)(2)(iii).

## **6. Employer Provided Educational Assistance**

**6.1.** Employer provided educational assistance provided to benefit eligible (“BE”) employees who are enrolled in for-credit classes, attending class on a regular basis (including on-line classes), and/or are pursuing a degree is considered a taxable fringe benefit to the employee. This includes assistance for classes taken at the University or at any degree granting institution.

**6.2.** Pursuant to the Internal Revenue Code, employers are permitted to exclude from an employee’s wages up to \$5,250 per calendar year in assistance that otherwise would be considered a taxable benefit. The exclusion amount is subject to change by Congress. The value of assistance provided to BE employees who are enrolled in classes will be monitored for amounts received during any given calendar year in excess of the current IRS exclusion allowance. Any amount received in

excess of the annual exclusion allowance may be treated as a taxable benefit provided to the employee and may be included in their gross wages with the applicable income taxes withheld, unless excluded pursuant to Section 6.3. See, IRS Pub 970 for more information.

**6.3. Job-Related Educational Expenses:** Certain job-related education provided to employees may qualify for exclusion from the employee's wages as a working condition benefit. Generally, degree programs do **not** qualify for this exclusion, especially at the undergraduate level. See, IRS Pub 5137.

**6.3.1. Working Condition Benefit:** To qualify as a working condition benefit, the education must meet the following criteria:

- **6.3.1.1.** The education is required by the employer or by law for the employee to keep his or her current salary, status, or position; and
- The education must serve a bona fide business purpose of the employer; or
- **6.3.1.2.** The education maintains or improves skills needed in the employee's current position;
- **6.3.1.3.** The education does not qualify as a working condition benefit if the employee will be qualified for a new trade or business upon completion; and
- **6.3.1.4.** The education does not qualify as a working condition benefit if it is needed for the employee to meet a minimum educational requirement for their current position. For example, an employee is hired in March with the expectation that they will graduate in May with a degree required for the position.

Examples of education that could be excluded as a working condition benefit include conferences and continuing education classes.

## 7. Gifts and Miscellaneous Benefits

**7.1.** Tangible gifts provided to employees that are valued at less than \$100 are excluded from gross wages as a de minimis benefit. Tangible gifts provided to employees in excess of the de minimis value are considered a taxable benefit to employees. The full value provided will be included in gross wages with the applicable income taxes withheld. See, IRS Pub 5137.

**7.1.1.** Multiple items purchased that when combined exceed a de minimis value will be treated as a single gift to the employee.

**7.2. Safety & Length of Service Awards** – Pursuant to IRS guidelines, tangible gifts or awards given for safety or for length of service are allowed an increased de minimis value of \$400 before being considered a taxable benefit to employees. Safety and length of service awards must meet certain requirements to qualify for this additional exclusion. The award must be given as part of a presentation and not provided in lieu of payment for services. Additionally, for length of service awards, the award must be presented to employees with a minimum of 5 years of service. The exception does not apply to personal vacations, meals, lodging, tickets to theater or sporting events, stocks, bonds, other securities, cash, cash equivalents, and other similar items. See, IRS Pub 5137.



**7.2.1.** Tangible gifts or awards given for safety or for length of service that meet the required criteria and are valued at less than \$400 are excluded from gross wages as a de minimis benefit. Safety and length of service awards should be clearly documented on the receipt/invoice submitted for payment including the type of award, and, for length of service, the number of years of service for the employee. Please note that retirement gifts are not considered years of service awards unless years of service is also recognized and all other criteria have been met.

**7.2.2.** Tangible gifts or awards given for safety or for length of service that either do not meet the criteria, or are valued in excess of \$400, will be considered a taxable benefit to employees. The full value will be included in gross wages with the applicable income taxes withheld.

**7.3. Cash & Cash Equivalents Including Gift Cards** – Cash and cash equivalents provided to an employee, whether as payment for services rendered, or as a gift, are considered additional income and are never excludable from income as a de minimis benefit regardless of the dollar amount. The value provided will be included in gross wages with the applicable income taxes withheld.

This guidance addresses the taxability of gifts provided to employees. It does **not** address gifts given to a West Virginia state employee from an ethics perspective. Please contact the General Counsel's Office or see the following websites for additional information on Ethics Rules regarding gifts to state employees:

- <https://ethics.wv.gov/Pages/default.aspx>
- <https://policies.wvu.edu/finalized-bog-rules/bog-governance-rule-1-4-ethics-conflicts-of-interest-and-outside-consulting-arrangements>

## **8. Hotel Occupancy Tax**

**8.1.** WVU shall assess and collect a Hotel Occupancy Tax when providing sleeping accommodations to the general, non-student public except in the following situations:

- **8.1.1.** For any consumer occupying a hotel room for thirty or more consecutive days;
- **8.1.2.** When the hotel room occupancy is billed directly to the United States of America or any agency thereof; or
- **8.1.3.** When the hotel room occupancy is billed directly to the State of West Virginia or any political subdivision thereof.

**8.2.** All Departments offering sleeping accommodations to non-students after October 1, 1996 must request review of the activity being conducted by Tax Services to determine the appropriate taxability.

## **9. Housing**

**9.1.** Pursuant to IRS guidelines, lodging (housing) furnished to an employee may be excluded from an employee's wages if (1) it is furnished on the business premises, (2) it is for the convenience of

the employer, and (3) the employee is required to accept the housing as a condition of employment. See, IRS Pub 5137.

**9.1.1.** Housing provided for compensatory purposes or in lieu of cash is always considered a taxable benefit to the employee.

**9.2. Presidential Housing** – Housing provided to the University President and regional campus presidents will be considered a nontaxable benefit as long as all of the following criteria are met:

- **9.2.1.** The housing is located on University property. Property should be located within or adjacent to campus property where a regularly enrolled body of students are present.
- **9.2.2.** The housing is provided for the convenience of the employer to allow the employee to be available as needed on a regular basis after normal business operational hours.
- **9.2.3.** The housing is provided for the convenience of the employer, and the facility is utilized as a dual use facility with an established business office for the president used interchangeably with their primary campus business office, and/or other University facilities, to conduct day-to-day business transactions and meetings, entertain University guests, cultivate donors, etc.
- **9.2.4.** To substantiate the convenience of the employer criteria, detailed documentation must be retained by the President and/or their staff indicating the business use of the facility. The documentation should indicate date and type of event, general description of business conducted, number of guests in attendance, and the part of facility used (e.g. office, meeting room, etc.). Documentation should be maintained for a period of not less than five (5) years.
- **9.2.5.** The president is contractually obligated to accept the housing as a condition of employment.
- **9.2.6.** The president is contractually obligated to accept the housing with no option of cash for a housing allowance in lieu of accepting the designated housing.

**9.3. Temporary or New Employee Housing** – Housing provided to temporary or newly hired employees will be considered a taxable benefit to the employee and will be included in the employee's gross wages with the applicable income taxes withheld, unless the IRS guidelines provided in Section 9.1 above are met. Housing provided could include hotel rooms, apartments, and/or house rentals owned by WVU or third parties.

**9.4. Other Housing Provided to Employees** – Housing provided to other employees will be considered a taxable benefit to the employee and will be included in their gross wages with the applicable income taxes withheld unless prior approval has been received by Tax Services and all of the following criteria have been met:

- **9.4.1.** The housing is located on University property.
- **9.4.2.** The housing is provided for the convenience of the employer to allow the employee to be available as needed on a regular basis after normal business operational hours.
- **9.4.3.** The housing is provided for the convenience of the employer and the facility is utilized as a dual use facility with an established documented business purpose.
- **9.4.4.** To substantiate the convenience of the employer criteria, detailed documentation must be retained by the employee indicating the business use of the facility. The documentation should

indicate date and type of event, general description of business conducted, number of guests in attendance, and the part of facility used (e.g. office, meeting room, etc.). Documentation should be maintained for a period of not less than five (5) years.

- **9.4.5.** The employee is contractually obligated to accept the housing as a condition of employment.
- **9.4.6.** The employee is contractually obligated to accept the housing with no option of cash for a housing allowance in lieu of accepting the designated housing.

To meet the above criteria under IRS Guidelines, the housing provided must be more than just as a convenience to WVU. The housing must be integral to the day-to-day job duties of the employee and must be part of the employee's written contract.

Examples of approved housing not subject to income tax withholding include farm managers residing at university owned farms and Resident Faculty Leaders ("RFL") and Living Learning Coordinators ("LLC") living in RFL/LLC housing. Approved housing must continue to meet the above criteria to remain a nontaxable benefit to the employee.

**9.5. Student Housing Related to Residential Hall Positions** – Housing provided to student employees in residential hall positions such as Residence Hall Coordinators or Resident Assistants is considered a nontaxable benefit for employment purposes under IRC Section 119(d) and will not be included in the student employee's wages nor reported on their Form W-2.

**9.5.1.** The value of the housing will be charged to the student's account as part of their student enrollment with a corresponding waiver applied for the room and board. Pursuant to IRS guidelines related to Form 1098-T reporting, the value of all gift aid provided must be reported in Box 5 of Form 1098-T.

## **10. I-9 Form Completion**

**10.1.** Federal regulations require that all U.S. employers complete and retain a Federal I-9 Form for each individual hired, prior to beginning employment. Failure to comply could result in fines, penalties, or other disciplinary actions against the hiring department and/or its supervisor or hiring official.

**10.1.1.** U.S. citizen employees must complete a Federal I-9 Form through WVU Shared Services prior to or on the first day of employment.

**10.1.2.** Non-U.S. citizen employees must complete a Federal I-9 Form through WVU Tax Services prior to or on the first day of employment.

**10.2.** To comply with federal regulations, West Virginia University must examine the employment eligibility and identity document(s) an employee presents to verify that (1) the document(s) reasonably appears to be genuine and (2) the document(s) belongs to that individual. Shared Services or Tax Services must then record required information from the document(s) on the Federal I-9 Form.

**10.3.** Employees must bring the required employment eligibility and identity document(s) to Shared Services or Tax Services for the Federal I-9 Form to be completed. A list of acceptable documents can be found at <https://sharedservices.wvu.edu/employee-processing>. Employees will not be placed on payroll if they fail to be processed by Shared Services or Tax Services prior to their first day of work.

## **11. Moving Expenses**

**11.1.** Moving reimbursements, lump sum payments for moving expenses, and/or payments made directly to a third-party vendor for moving expenses incurred by a new or existing employee are considered a taxable benefit. The value of taxable benefits provided to an employee will be included in their gross wages with the applicable income taxes withheld. See, IRS Pub 5137.

**11.2.** Typical moving related expenses include, but are not limited to, U-Haul rentals, payments to third party moving companies, airfare, tolls, moving supplies, meals while in transit, hotel rooms while in transit, house hunting trips, temporary housing, etc.

## **12. Paid Employee Parking**

**12.1.** WVU does not offer employer paid parking as part of its benefit package. As such, Departments are not permitted to purchase parking permits for any employee, including student employees.

## **13. Payments to Foreign Vendors and Independent Contractors**

**13.1.** West Virginia University will withhold ATAX at a 30% rate on payments made to foreign vendors that represent U.S. sourced service payments, interest, dividends, rents, premiums, annuities, and any other fixed determinable annual or periodic gains, profits, and income, unless an income tax treaty operates to exempt the income or another exemption applies. See, IRS Pub 515.

**13.1.1.** In most situations, payments made to foreign vendors for purchased goods, reimbursements for business travel, or living expenses will not be subject to ATAX withholding or reporting obligations if the reimbursement meets the accountable plan rules.

**13.2.** It is the responsibility of the Department that plans to engage and pay for the services of a foreign vendor providing services in the United States or subject to taxation in the United States to contact the Tax Services Unit for review and approval **prior** to any services being performed. It is also the responsibility of the Department to obtain the needed documentation for this determination process including, but not limited to, the Foreign National Form (provided by the Tax Services Unit upon request), copies of the individual's passport, Visa, and Individual Taxpayer Identification Number (ITIN) if available.

**13.3.** Generally, 30% must be withheld from payments for services provided by a foreign vendor unless an income tax treaty operates to reduce the tax rate or exempt the income from ATAX. The

foreign vendor who wishes to claim a withholding exemption based on a tax treaty must **annually** complete and return to the Tax Services Unit a **Form 8233**, Exemption Form “Withholding on Compensation for Independent Personal Services of a Nonresident Alien Individual.” Without receipt of this form **before** the payment is made, and without a valid ITIN, treaty benefits cannot be applied, and the payment will be subject to 30% ATAX withholding.

**13.4.** Failure to receive prior approval, and to withhold the required ATAX from the foreign vendor’s payment, can result in the gross-up of the payment amount to cover the ATAX due. Departments are responsible for all ATAX gross-up tax amounts.

**13.5.** Failure to receive prior approval can result in a potential violation of the immigration laws. Violations of the immigration laws can jeopardize the foreign vendor’s visa status. Dependent upon the individual’s visa status, the foreign vendor can be limited in the services they are permitted to perform in the United States as an independent contractor or vendor.

## **14. Sales and Use Tax**

**14.1.** Sales tax is imposed on the sale of goods and services by the vendor at the time of purchase. Use tax is imposed on the use of goods and services in West Virginia on which applicable sales tax has not been paid. Pursuant to West Virginia Tax Department rules and regulations:

- **14.1.1.** All sales of tangible personal property or taxable services are presumed to be subject to sales tax.
- **14.1.2.** Sales tax must be collected unless a specific exemption applies to the transaction and proper documentation of the exempt status of the purchaser is established.
- **14.1.3.** The burden of proving that a transaction is exempt from the collection of sales tax is on the purchaser **and** the vendor (usually the WVU Department) making the sale.
- **14.1.4.** Vendors (usually the WVU Departments) that fail to collect and remit sales tax on taxable transactions, or who fail to maintain proper records and documents with respect to taxable transactions, are liable for payment of the tax amount.

**14.2. State Sales and Use Tax** – WVU Departments shall assess and collect sales tax at a rate of 6% (subject to change by the WV Legislature) on all sales of goods and services as stipulated by the WV Tax Dept. rules and regulations, unless an exemption specifically applies either to the purchaser or on the goods sold or services rendered. Approximately 70 municipalities in West Virginia impose an additional 1% sales tax collected by the vendor and remitted to the West Virginia State Tax Department at the same time as the state sales tax. See Section 14.5 below concerning Municipal Sales and Use Tax.

It is the responsibility of the WVU Department making the sale to (1) determine if it is a taxable sale or if an exemption applies; (2) collect all sales tax due; and (3) maintain all related documentation connected to the sale.

**14.3. Exemptions and Nontaxable Sales** – The following is a list of exemptions from sales tax. This list is **not** exhaustive. WVU Departments should contact WVU Tax Services for guidelines regarding

the sale of goods or services when unsure.

**14.3.1.** Sales of goods and services to other WVU departments, colleges, schools, or units including branch campuses. No additional documentation is needed for these sales.

This exemption applies **only** to WVU entities and would **not** include sales to WVU Foundation, WVU Research Corporation, WVU Innovation Corporation and/or WVU Student Organizations.

**14.3.2.** Sales of goods and services to other non-profit 501(c)(3) or (c)(4) or governmental agencies such as WVU Foundation, WVU Research Corporation, etc. who properly present a sales tax exemption form. It is the responsibility of the WVU Department making the sale to obtain the required sales tax exemption form and to maintain such documentation for a period of not less than five (5) years.

**14.3.3.** Sales of food and food ingredients for human consumption. Food items must be in a raw, uncooked, or unprepared form. Sale of prepared foods is subject to sales tax.

**14.3.4.** “Per Se” exemptions for goods and services that are sales tax exempt based on the specific good or service sold. No additional documentation is needed for these sales. “Per Se” exemptions include, but are not limited to, the following:

- **14.3.4.1.** Sales of advertising
- **14.3.4.2.** Sales of room, board, and meals by WVU to students who are enrolled in classes and when the room & board is for more than 30 consecutive days
- **14.3.4.3.** Sales of day care center services
- **14.3.4.4.** Sales of intangible property such as copyrights, royalties, etc.
- **14.3.4.5.** Educational summer camp tuition

**14.3.4.5.1.** To be exempt from sales tax, summer camps must be educational in nature and the amount collected must be considered “tuition.” Sales tax exempt examples include, but are not limited to, scout camps, 4-H camps, music, art, science, computer, religious study, math and any other educational summer camp where the participants spend a substantial amount of time receiving instruction. Camps for the primary purpose of training in athletics, sports training, or physical condition are **not** considered education summer camps and **are subject** to sales tax.

**14.3.4.5.2.** Charges for food, lodging, equipment, clothing, books, etc. are taxable for **all** summer camps.

**14.3.5.** One-on-one physical fitness classes that qualify as a personal service such as personal trainers or individual swim lessons. Must be one-on-one and not part of a group class.

**14.3.6.** Greenhouse and/or farm sales of meat, vegetables, bedding plants, flowers, hay, straw and live animals produced by students and/or WVU employees as part of a University program.

**14.3.7.** Student transcript charges.

**14.3.8.** Student/Employee ID replacement charges.

**14.4. Examples of Taxable Sales** – The following is a list of taxable sales. This list is *not* exhaustive. WVU departments should contact WVU Tax Services for guidelines regarding the sale of goods or services when unsure.

- **14.4.1.** Pro Shop/Souvenir Shop sales
- **14.4.2.** Sales of refreshments from concession stands
- **14.4.3.** General public admission to swimming pools, recreation centers, fitness centers, etc.
- **14.4.4.** General public catering services for parties, wedding receptions, banquets, etc.
- **14.4.5.** General public charges for non-credit classes such as tennis, swimming, golf, aerobics, crafts, etc.
- **14.4.6.** General public room rental for conferences, meetings, etc.
- **14.4.7.** General public rental of equipment including AV equipment, tables, chairs, etc.
- **14.4.8.** General public Rec Center Membership fees including summer memberships to unenrolled students
- **14.4.9.** General public locker rental fees
- **14.4.10.** General public theatre tickets for live theatre productions
- **14.4.11.** Miscellaneous processing fees assessed on entertainment tickets
- **14.4.12.** Credit card surcharges
- **14.4.13.** GovDeals online non-vehicle sales of surplus equipment
- **14.4.14.** Sales made by restaurants and eating establishments of prepared food and drinks
- **14.4.15.** Late fees imposed for early termination of a lease

**14.5. Municipal Sales and Use Tax** – Municipalities within the State of West Virginia may impose a Municipal Sales and Use Tax on taxable sales within the municipality. In general, transactions subject to state sales tax will also be subject to municipal sales tax.

It is the responsibility of the WVU Department who is making the sale to determine (1) if they are located in a municipality that has imposed an additional sales tax; (2) if the sale is a taxable sale or if an exemption applies; (3) to collect all sales tax due; and (4) to maintain all related documentation connected to the sale. WVU Departments should contact WVU Tax Services for guidelines regarding the sale of goods or services when unsure and for assistance in determining which municipalities impose additional sales tax and the applicable tax rate. The following website may assist in any determination: <https://tax.wv.gov/Business/SalesAndUseTax/MunicipalSalesAndUseTax/Pages/MunicipalSalesAndUseTax.aspx>.

**14.6. Required Documentation & Process** – WVU Departments that sell goods and/or services should maintain the following documents and create the following reports:

**14.6.1.** Maintain completed Sales Tax Exemption forms for non-profit or governmental agencies claiming exemption from sales tax. All exemption certificates should be maintained by the WVU Department for a minimum of five (5) calendar years.

**14.6.2.** On a routine basis, depending upon sales volume, but no less than on a **monthly** basis, the Department shall create a detailed report showing:

- **14.6.2.1.** Gross sales;
- **14.6.2.2.** Total non-taxable sales;
- **14.6.2.3.** Total taxable sales;
- **14.6.2.4.** Total sales tax collected; and
- **14.6.2.5.** Total municipal sales tax collected (if applicable).

**14.6.3.** On a routine basis, depending upon sales volume, but no less than on a **monthly** basis the Department shall create a detailed report showing the amount of tax deposited into the Tax Services Consumer Tax account.

## **15. Spousal Expense**

**15.1.** Reimbursement for employee guest meals, entertainment or travel expenses (including air travel) are potentially taxable to employees under IRS Code Section 274(m)(3) and IRS Regulation 1.132-5(t).

**15.2.** The employee guest's meals, entertainment, and/or or travel expenses will not be taxable to the employee if both of the following conditions are met:

**15.2.1.** The employee guest has a bona fide business purpose which is included in the expense documentation (e.g. on the receipt or reimbursement request); and

**15.2.2.** The employee substantiates the expenses following the accountable plan rules.

**15.3.** Examples of acceptable and bona fide business purposes include:

**15.3.1.** A WVU employee is attending a meeting and the employee guest attends with the intention of actively participating for business purposes such as taking notes, minutes, presenting, or outright advising during the meeting.

**15.3.2.** The employee guest's attendance is considered a "necessary service" as a representative of the University. Determination of a necessary service for this purpose should be made by a dean, vice president, or higher University official and must be documented by the approver. For example, a spouse is required by the dean to be in attendance of certain events, alumni/fundraising activities or ceremonies. This serves as publicity and a public relations function and is contributing to the mission of the University and would be considered a necessary service.

**15.4.** Examples of employee guest purposes that do not satisfy the bona fide business purpose criteria include:

**15.4.1.** A lunch meeting conducted by the spouses of university employees to discuss logistics of an event such as travel arrangements, parking, seating, etc.



**15.4.2.** Two University employees along with their personal guests meet once a week for lunch as a reoccurring event. There are no additional guests, unrelated to the University employee(s) and/or not considered a person guest, present to indicate a business purpose such as donor relations or fund raising and there was no bona fide business purpose established for this reoccurring event.

**15.5.** Employees seeking reimbursement of expenses for employee guests must submit documentation with the reimbursement request demonstrating the following:

- **15.5.1.** Amount of expense
- **15.5.2.** Time and date
- **15.5.3.** Location
- **15.5.4.** Business relationship – Occupation or other information related to the person or persons entertained, including name, title, or other designation sufficient to establish a business relationship to the University.
- **15.5.5.** Business purpose – the business reason for the expense or nature of the business benefit derived or expected to be derived as a result of the expense. The business purpose must be “certain” and “specific.” Documentation should clearly demonstrate that the employee guest function was of significant value.

Failure to meet these requirements will result in additional taxable income to the employee.

All expenses incurred and paid for employee guest(s) cannot be reimbursed from University funds if no business purpose is present. Regardless of the source of reimbursement of the expense, the above requirements for documentation and business purpose are to be observed.

## **16. State and Local Income Tax Withholding**

### **16.1. WV Tax Department Guidelines**

**16.1.1.** All employees, regardless of the state in which they reside, who work in and/or perform personal services in West Virginia, are subject to withholding of West Virginia Income Tax to the extent of wages paid for their services in West Virginia.

**16.1.2.** An employer shall deduct and withhold taxes on all wages paid to an employee for services performed in West Virginia.

**16.1.3.** A reciprocal agreement exists between the State of West Virginia and the states of Kentucky, Maryland, Ohio, Pennsylvania, and Virginia, with regard to withholding taxes. Residents of Kentucky, Maryland, Ohio, Pennsylvania, and Virginia employed in West Virginia must execute a Certificate of Nonresidence which must be maintained by the employer to be exempt from West Virginia income tax.

**16.1.4.** The employer must deduct and withhold West Virginia State Income Tax if a Certificate of Nonresidence is not properly executed by an employee who is a resident of Kentucky, Maryland, Ohio, Pennsylvania, or Virginia.

## **16.2. State Income Tax Withholding**

**16.2.1.** As an employer located within the state of West Virginia and in compliance with WV Tax Dept. guidelines, WVU will withhold West Virginia state income tax from all wages paid to employees for services performed unless the employee (1) is a resident of a state with a reciprocal agreement; and (2) WVU has a properly completed and executed Certificate of Nonresidence on file.

**16.2.2.** Employees who reside in a state other than West Virginia, Kentucky, Maryland, Ohio, Pennsylvania or Virginia or in another country, will have West Virginia state income tax withheld from all wages in accordance with WV Tax Dept. guidelines, which only specifically exclude resident from a reciprocal agreement state from West Virginia state income taxation.

**16.3. Local Income Tax Withholding** – WVU does not withhold local income tax from wages paid to employees. City fees assessed by West Virginia municipalities are considered a fee and are not considered a local income tax for withholding and reporting purposes.

## **17. Student FICA Exemption**

**17.1.** An employee of the University who is enrolled at least half-time in an undergraduate, graduate, or professional student program, and who is not a benefit eligible employee, may qualify for the student FICA exemption. See, Safe Harbor under Rev. Proc. 2005-11.

**17.2.** The student FICA exemption does not apply to services performed by an individual who is not enrolled in classes during school breaks of more than five weeks (summer breaks).

**17.3.** The student FICA exemption does apply to employment which continues during normal school breaks of 5 weeks or less (spring break, winter break, Thanksgiving, and between sessions), if the student was enrolled at least half-time on the last day of classes (or examinations) preceding the break and is eligible to and does enroll in classes for the first academic period following the break.

**17.4.** The amount of remuneration for services performed by the employee, the type of services performed by the employee, the place where the services are performed, and the number of hours worked are immaterial.

**17.5.** Each pay cycle, the University will confirm that employees exempt from FICA withholding meet the test of enrollment and are in a non-benefit eligible position.

**17.6. Enrollment Requirements:**

**17.6.1. Fall, Winter, and Spring Terms:**

- **17.6.1.1.** Undergraduate students enrolled for at least 6 credit hours per semester.
- **17.6.1.2.** Graduate (Master, Professional, and Doctoral) students enrolled at least 5 credit hours per semester.

**17.6.2. Summer Terms:**

- **17.6.2.1.** Undergraduate students enrolled for at least 6 credit hours per semester.
- **17.6.2.2.** Graduate (Master, Professional, and Doctoral) students enrolled for at least 3 credit hours per semester.

## 18. Uniforms

**18.1.** Articles of clothing that meet the criteria listed below can be considered a uniform and provided to employees as a non-taxable benefit. It is the responsibility of the Department to (1) create a department level uniform policy that includes the criteria listed below; (2) enforce the uniform policy within the department; (3) obtain approval from senior management for uniform purchases; and (4) maintain documentation supporting the purchase or rental of uniforms including the items purchased, date of purchase, cost, and the employee for whom the item was purchased. See, IRS Pub 5137.

**18.2.** Articles of clothing provided to an employee can be considered a uniform if the following guidelines are met:

- **18.2.1.** The item is part of a recognized uniform. Examples would include a polo shirt with the Flying WV and the Department name embroidered on the upper left side.
- **18.2.2.** The item clearly identifies the individual as a WVU employee by identifying the Department they represent. This does not include Athletic employees who are required to wear specifically branded gear as part of a clothing contract.
- **18.2.3.** All employees within the Department are required to wear the item on a regular and routine basis during their regular work hours as a condition of employment.
- **18.2.4.** Employees are not permitted to wear the item while off duty.

**18.3.** Failure to develop, enforce, and monitor a departmental level policy or failure to meet the criteria listed can result in a taxable benefit to the employee. The value of taxable benefits provided to an employee will be included in their gross wages with the applicable income taxes withheld.

**18.4.** Non-Uniform Articles of Clothing – Articles of clothing provided to an employee are not considered a uniform if they are (1) provided for a specific event(s), (2) not considered part of an established or recognized uniform, or (3) become the employee's property.

Examples of non-uniform articles of clothing include matching t-shirts purchased for employees who are working a booth at an Employee Fair or a faculty member who purchases matching shirts for a group of students, including the faculty member, who will be representing the University at a presentation or conference. The articles of clothing in these situations are for a specific and limited use versus daily wear as a condition of employment, and, therefore, are not considered a uniform, but are instead considered a gift. Please see the Gift and Miscellaneous Benefits guidance for applicable guidelines.

## 19. University Provided Meals

**19.1.** Pursuant to IRS guidelines, an employer may exclude from taxable income any **occasional** meal provided to an employee.

**19.1.1.** Examples of occasional meals include, but are not limited to, coffee, doughnuts, soft drinks, and occasional meals or meal money provided to enable an employee to work overtime, as long as the amount provided is not provided on a regular or routine basis.

**19.2.** Meals provided to an employee on a **routine** basis must be on the employer's business premises and for the convenience of the employer to be considered a nontaxable benefit to the employee. To meet the "for the convenience of the employer" criteria, the meal must be provided for a substantial, documented non-compensatory business reason.

**19.2.1.** Examples of "for the convenience of the employer" include, but are not limited to, food service employees; employees available for emergency calls where emergency calls are routinely received during an employee's meal period; and shortened meal periods during temporary periods of increased work, but not due to an employee's desire to have a shortened work day.

**19.2.2.** Meals provided for compensatory purposes or in lieu of cash are always considered a taxable benefit to the employee.

**19.3. Administrative Dining Plans and Other Free Meals** - Administrative Dining Plans ("ADP") and/or other meals provided to employees for free on a routine basis may be a taxable benefit to the employee. Information should be reported to Tax Services by the Department/Unit providing the ADP and/or other meals on a per semester basis, at a minimum. ADP and/or other meals provided for a non-compensatory business reason must include a substantiated, documented business reason to be considered a nontaxable benefit to the employee.

**19.3.1.** "Other meals" include meals provided on a routine basis for free to an employee without a valid, substantiated business purpose and do not meet the criteria "for the convenience of the employer." An example would include an employee from WVU Mail Services or WVU UPD who is in the Mountainlair during a meal period and the employee chooses to eat while there.

**19.3.2. Exception – Meals Provided in Connection with Housing:** Administrative Dining Plans (ADP) provided to employees will be considered for the convenience of the employer and will be classified as a nontaxable benefit to the employee if all the following criteria are met:

- **19.3.2.1.** The meal is provided on University property;
- **19.3.2.2.** The ADP is provided in connection with housing provided by the University;
- **19.3.2.3.** The employee is contractually obligated to accept the housing as a condition of employment;
- **19.3.2.4.** The employee is contractually obligated to eat in the University dining facilities on a regular basis to be in contact with and available to University students as a condition of employment; and
- **19.3.2.5.** The employee is contractually obligated to accept the housing and ADP with no option of receiving cash in lieu of acceptance of either the designated housing or ADP.

**19.3.3.** An ADP provided to a spouse, significant other, and/or dependent of an employee will also be considered for the convenience of the employer and a nontaxable benefit to the employee if the above criteria are met regarding the employee **and** if the spouse, significant other, and/or dependent of the employee also resides in the University provided housing.

**19.4. Food Service Employees** - Meals furnished on a routine basis to a restaurant or other food service employee during, immediately before, or after the employee's working hours are considered to be furnished for the convenience of the employer and, as such, are a nontaxable benefit to the employee. For example, if a Dining Services employee works through the breakfast and lunch periods, a provision of a breakfast and/or lunch meal is considered to be for the convenience of the employer and a nontaxable benefit to the employee.

**19.5. Hospitality Service-Related Meals** - Employer provided meals that meet the criteria to be considered a Hospitality Service are potentially taxable income to the employee. Please see the *Procurement, Contracting & Payment Services* "Hospitality Service Policy" for a definition of what is considered a Hospitality Service along with allowable and unallowable expenses.

**19.5.1.** Allowable expenses will be considered a nontaxable benefit to the employee **only** if there is a clearly documented business reason for the meal. A clearly documented business purpose must be provided for **all** employees and/or their guests. For example, at the request of the dean, a current WVU employee's spouse is present during a recruiting meal with a candidate and his/her spouse. To be considered a nontaxable benefit, the presence of the current WVU employee's spouse must be clearly documented as a request of the dean for recruitment purposes. Please see the *Tax Services* "Spousal Expenses" guidance for additional requirements.

**19.5.2.** Allowable expenses under the "Hospitality Service Policy" that are deemed by Tax Services to be a taxable benefit to the employee, and all unallowable expenses as per the policy, will be considered a taxable benefit to the employee that will be included in their gross wages with the applicable income taxes withheld.

**19.6. Student Meals Related to Residential Hall Positions** - Meal plan allowances provided to student employees in residential hall positions, such as Residence Hall Coordinators or Resident Assistants, are considered a nontaxable benefit for employment purposes under IRC Section 119 and will not be included in the student employee's wages nor reported on their Form W-2.

**19.6.1.** The value of the meal plan allowance will be charged to the student's account as part of their student enrollment with a corresponding waiver applied. Pursuant to IRS guidelines, the value of the waivers provided for meal plan allowances will be included on the student's Form 1098-T as gift aid, as required by the IRS.

**19.7. Other Student Related Meals** - Other student related meal plan allowances including, but not limited to, meals provided to the Mountaineer Mascot and/or other students whether service related or not, are considered a form of gift aid.

**19.7.1.** The value of the meal plan allowance will be charged to the student's account as part of their student enrollment with a corresponding waiver applied. Pursuant to IRS guidelines, the value of the waivers provided for meal plan allowances will be included on the student's Form 1098-T as gift aid as required by the IRS.

**19.7.2.** Meals provided to student athletes as part of a team meal are not considered a form of gift aid and are therefore not reportable in Box 5 of the student's Form 1098-T.

**19.8. Highly Compensated.** With respect to any highly compensated employee, in addition to the other requirements above, any exclusion for meals at a University provided facility is available only if access to such facility is available on substantially the same terms to each member of a group of employees that is defined under a reasonable classification set up by the University that does not discriminate in favor of highly compensated employees.

## **20. Unrelated Business Income – Non-Research Activities**

**20.1.** Activities which generate unrelated business income ("UBI") are subject to federal taxation on net income. Colleges/Departments beginning new revenue generating programs must contact the Tax Services Unit to determine whether the activity is subject to federal taxation as UBI. See, IRS Pub 598.

**20.2.** It is the responsibility of the Colleges/Departments to ensure appropriate funds are available for payment of the federal tax liability based on net income to be remitted with the University's tax return following the end of each fiscal year.

## **21. Unrelated Business Income – Research Activities**

**21.1.** Research activities normally carried on incident to commercial or industrial operations, which generate UBI, are subject to federal taxation on the net income generated. Upon expiration of an award, the Office of Sponsored Programs will collect a completed UBI questionnaire from the principal investigator for all projects in which there was a residual or net income amount. Tax Services will then evaluate the project to determine if the project was an unrelated business or project subject to UBI taxation.

**21.2.** It is the responsibility of the Colleges/Departments and/or Grant Principal Investigator to ensure appropriate funds are available for payment of the federal tax liability based on net income to be remitted with the University's tax return following the end of each fiscal year. Grant language that prohibits the use of grant funding in the payment of taxes does not negate the tax liability. In that situation, funds from the College/Department related to the Grant should be used.