

COMMONWEALTH OF MASSACHUSETTS - OFFICE OF THE COMPTROLLER

NOTICE OF COMMONWEALTH RESPONSIBILITIES FOR SETTLEMENT/JUDGMENT TAX WITHHOLDINGS, INTERCEPT AND TAX REPORTING W-2, 1099-MISC and 1099-INT AND PUBLIC RECORDS REQUESTS



To Settlement/Judgment Claimant, Attorney or 3rd Party Payee:

The following information outlines the tax reporting, withholding, intercept and public records disclosure requirements for Settlement and Judgment payments made by Commonwealth Departments pursuant to 815 CMR 5.0. All questions should be referred to the Claimant's attorney/representative or the Commonwealth Department subject to the Settlement or Judgment. The Office of the Comptroller will not discuss individual claims, tax reporting or withholding issues, the status of payments or public records issues with Claimants or Claimant attorneys. Any additional information provided is informational only and should not be considered legal or tax advice. Claimants, attorneys and 3rd parties are responsible for seeking legal and tax advice and for all tax liabilities and tax compliance.

Intercept and Wage Garnishments. Claimants are advised that the Commonwealth is obligated to intercept (deduct) from any settlement or judgment payment amounts due for outstanding government debts (such as state or federal taxes, child support, student loans or other debts for which due process notice has already been provided), as well as for existing wage garnishments posted in the state payroll system HR/CMS. Intercepts may be taken even if a deduction is not specifically identified as part of a settlement or judgment.

Workers Compensation. Employment related personal injury or sickness claims are not considered an employment related claim or a tort claim, and must be filed and processed as a workers compensation claim under the appropriate workers compensation or supplemental workers compensation statutes (G.L. c. 152, c. 30, § 58, c. 40, s. 111F, G.L. c. 126, s. 18A).

Employment Related Claims: An employment related claim includes any damages awarded to or on behalf a current or former Commonwealth employee which arose from an employment relationship. The Commonwealth as a general policy processes all employment related damages as "wages" through the state payroll system with applicable supplemental flat tax withholding rates for state taxes (5.25%), federal taxes (25%), Medicare taxes (1.45%). W-4 elections do not apply. **Back pay damages** include payments only for a specific number of hours, days or differential amounts at the allowable salary for that period, with retirement contributions, and less any other income earned during that number of days from unemployment, retirement earnings or other earnings. **Lump sum damages** include any unspecified, compensatory or make-whole damages, overtime, emotional distress, front-pay, health insurance premium or other reimbursements etc. Employment claim reimbursements are generally taxable and not considered normal employee business reimbursements, even if paid as a "Make-whole" payment.

Withholdings on employment related back pay or lump sum amounts are mandatory at the time of payment, may not be negotiated, and will be reported by the Commonwealth on the current or former employee's W-2. The Commonwealth has determined that the risk to Claimants of penalties and interest for failure to pay quarterly estimated taxes, and the risk to the Commonwealth and taxpayers for penalties and interest for failure to withhold taxes supports this tax withholding and reporting practice. Claimants should consult their tax advisor to determine if any tax refunds or deductions are appropriate. Please see *IRS Memorandum Income and Tax Reporting Consequences of Employment Related Judgments and Settlements* at: <http://www.mwe.com/info/pubs/irsconselememo.pdf>.

Payments to a 3rd Party. A Claimant may also receive a 1099-MISC (Box 3) (employee or non-employee claimant) if a payment is made directly to a 3rd Party under a settlement or judgment. All damages awarded under a settlement or judgment are awarded to the Claimant even if the payments are identified to be made to a 3rd party (such as an attorney, estate, insurer etc.). The Claimant will receive a 1099-MISC (Box 3) for any amounts paid to a 3rd party in addition to any 1099 issued to the 3rd party, and will be responsible for filing this form, and payment of any taxes, as part of the Claimant's tax return.

Interest (pre or post judgment). Statutorily authorized interest amounts are considered tax reportable on a 1099-INT and are generally taxable. Any payee receiving interest will receive a 1099-INT and will be responsible for filing this form, and payment of any taxes, as part of the tax return.

Lump Sum. Unspecified, make-whole, and other types of compensatory damages, consequential, emotional distress and punitive damages are considered gross income and tax reportable and are generally taxable. Current or former employees will receive a W-2 for employment related payments of lump sum damages (see "Employment claims" above). Non-employee Claimants will receive a 1099-MISC (Box 3) and will be responsible for filing this form, and payment of taxes, as part of the Claimant's tax return.) Claimants should contact a tax advisor and their attorney for guidance on tax issues. Please see IRS Publication 4345 at: <http://www.irs.gov/pub/irs-pdf/p4345.pdf>.

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Tort Claims. Presentments filed under M.G.L. c. 258, the Massachusetts Tort Claims Act (See <https://malegislature.gov/Laws/GeneralLaws/PartIII/TitleIV/Chapter258>) for personal physical injury or sickness or property damages (not exceeding the adjusted basis or value of the property) are generally not tax reportable. Civil rights or federal claims that are not filed under c. 258 may be tax reportable and taxable unless a personal physical injury or property damage is established. Note that emotional distress is not considered a personal physical injury or sickness unless it is legally determined to have arisen from a physical injury or sickness caused by a tort.

Civil Rights Claims. State or federal claims of civil rights discrimination, even if filed as tort or tort-like claim, will be considered tax reportable (W-2 with withholdings for employees or 1099-MISC Box 3 non-employees) and are generally considered taxable, unless a personal physical injury/sickness or property damage is established. Note that emotional distress is not considered a personal physical injury or sickness unless it is legally determined to have arisen from a physical injury or sickness caused by a tort.

Attorneys fees. A Claimant may receive a 1099-MISC (Box 3) for any amounts paid to the Claimant's attorney and will be responsible for filing this form as part of the Claimant's tax return. All damages awarded under a settlement or judgment are considered awarded to the Claimant even if the payments are identified to be made to the attorney as attorneys fees. The Claimant's attorney will also receive a 1099-MISC (Box 14) for the same amount. For employment claims, attorneys fees are not considered "wages" and are not subject to tax withholdings prior to payment but are considered gross income and may be taxable to the Claimant. See IRS Revenue Rule 80-364. There may be a limited exclusion from gross income for attorney fees for unlawful discrimination claims. See IRC § 62(e) and IRS [Publication 525](#) and [Mass. Dept. of Revenue - TIR 05-16; The Effect of the Adoption of the Updated Internal Revenue Code on the Massachusetts Personal Income Tax \("Code Update"\)](#). See section B: [Deduction for Costs Involved in Unlawful Discrimination Suits IRC §§62\(a\)\(19\) & 62\(e\)](#). <http://www.mass.gov/dor/businesses/help-and-resources/legal-library/tirs/tirs-by-years/2005-releases/tir-05-16-the-effect-of-the-adoption-of-the.html>.

Indemnification Costs. Legal costs for representation of any Commonwealth employee or officer, and any associated claim damages paid on the claim, are not tax reportable to the indemnified employee or officer subject to M.G.L. c. 258.

Estimated Taxes for Payments Issued Without Withholdings. If withholdings are not made at the time of payment, estimated taxes may be due in the quarter following payment of a claim and penalties and interest may accrue if estimated taxes are not paid timely to the IRS or the State Department of Revenue (DOR). Claimants should contact a tax advisor and their attorney for guidance on tax issues. Please see IRS Publication 4345 at: <http://www.irs.gov/pub/irs-pdf/p4345.pdf>.

Public Records Disclosure. Based upon a recent court decision, *Globe Newspaper Co., Inc. v. Executive Office of Administration and Finance, et. al.*, Suffolk Superior Court Civil Action No. 11-01184-A, (http://www.macomptroller.org/wp-content/uploads/content/globe-v-anf-decision_2013-06-14.pdf) the name of a recipient payee of a settlement or judgment payment made from the CTR Settlement and Judgment account is considered a public record and is subject to disclosure. In order for CTR to exempt a payee name, a Department must provide a specific statutory exemption, or a ruling from the Supervisor of Public Records barring the release of the name of a payee recipient. See: <http://www.macomptroller.org/wp-content/uploads/s-j-public-records-requests.pdf>.

Additional Settlement and Judgment Information. See: <http://www.macomptroller.org/settlements-and-judgments> for additional Settlement and Judgment information.