

## TAXABILITY OF EMPLOYEE BENEFITS

### WHAT ARE EMPLOYEE BENEFITS?

An employee benefit is any benefit provided or paid by the employer for the benefit of the employee or the employee's family. Benefits are generally included in the employee's wage for tax purposes, except those benefits that qualify for an exclusion. A table describing the taxability of common employee benefits begins on page 2 of this information sheet.

### WHO IS AN EMPLOYEE?

For Unemployment Insurance (UI), Employment Training Tax (ETT), and State Disability Insurance\* (SDI) purposes, *employee* includes an officer of a corporation, an employee under the usual common law rules, and any worker whose services are specifically covered by law. For more information, refer to Information Sheet: *Employment* (DE 231).

For Personal Income Tax (PIT) purposes, *employee* includes a resident of California who receives remuneration for services performed within or without this State, a nonresident who receives remuneration for services performed within this State, or an officer of a corporation. However, the term *employee* has different meanings in relation to the types of benefits shown in the Fringe Benefits section of the attached table. For example:

- For working condition fringes, the term *employee* includes a current employee, a partner who performs services for the partnership, a director of the employer, and any independent contractor who performs services for the employer.
- For qualified transportation reimbursements and qualified moving expense reimbursements, the term *employee* includes a current employee and a leased employee who has provided services on a substantially full-time basis for at least a year under the employer's primary direction and control. For these benefits, however, *employee* does not include a 2 percent shareholder/employee of an S corporation.

**PLEASE NOTE:** For determining the taxability of employee benefits, the definition of who qualifies as an employee is the same for California purposes as it is for federal purposes, with one important exception: California law provides that a registered domestic partner (as defined in Section 297 of the Family Code) is the same as a spouse.

### WHAT ARE WAGES?

Wages are payments made to an employee for his or her personal services, including commissions, bonuses, and the reasonable cash value of all amounts paid to employees in any medium other than cash (for example, taxable benefits).

### WHAT ARE BENEFITS THAT QUALIFY FOR EXCLUSION FROM INCOME?

*Wages* does not include any benefit that is qualified for exclusion from income. To be qualified, the benefit must be either specifically excluded from wages (income) in the California Unemployment Insurance Code (CUIC) or excluded in the CUIC by reference to the Revenue and Taxation Code or the Internal Revenue Code.

Benefits may be excluded from wages in full, partially, or only to the extent that certain conditions are met. **Please note the attached table does not explain the conditions for the excluded benefits. The table only addresses the taxability of the benefits when all the required conditions have been met.**

### ADDITIONAL INFORMATION

For further assistance, please contact the Taxpayer Assistance Center at (888) 745-3886 or visit the nearest Employment Tax Office listed in the *California Employer's Guide* (DE 44) and on EDD's Web site at [www.edd.ca.gov/Office\\_Locator/](http://www.edd.ca.gov/Office_Locator/).

EDD is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individual with disabilities. Requests for services, aids, and/or alternate formats need to be made by calling (888) 745-3886 (voice) or TTY (800) 547-9565.

TYPE OF BENEFIT	CALIFORNIA		
	UI/ETT	SDI	PIT
<b>ACHIEVEMENT AWARDS</b> <ul style="list-style-type: none"> <li>Qualified plan awards not to exceed \$1,600.</li> <li>Nonqualified awards of \$400 or less.</li> </ul> <p>Awards given in the form of tangible personal property (other than cash or securities). The maximum award amounts have been in effect since January 1, 1987.</p>	Not Subject	Not Subject	Not Subject
<b>ADOPTION ASSISTANCE</b> <ul style="list-style-type: none"> <li>A program under Section 137 of the Internal Revenue Code provides for the gross income exclusion of qualified adoption expenses.</li> </ul>	Subject	Subject	Not Subject
<b>CAFETERIA PLANS</b> <ul style="list-style-type: none"> <li>Employer contributions for benefits excludable from gross income.</li> <li>Employer contributions into a cafeteria plan for a health savings account.</li> <li>Employee salary reductions to a qualified Section 401(k) Internal Revenue Code, retirement program.</li> <li>Employee salary reduction for dependent care assistance, accident, health, and/or group-term life insurance.</li> <li>Employee salary reductions to a health savings account.</li> <li>Cash payments in lieu of qualified benefits.</li> <li>Contributions into cafeteria plan for adoption assistance.</li> </ul> <p><b>Adoption assistance program payments from a cafeteria plan are not subject for UI, ETT, SDI, and PIT withholding purposes.</b></p>	Not Subject	Not Subject	Not Subject
<ul style="list-style-type: none"> <li>Employer contributions into a cafeteria plan for a health savings account.</li> </ul>	Subject	Subject	Subject
<ul style="list-style-type: none"> <li>Employee salary reductions to a qualified Section 401(k) Internal Revenue Code, retirement program.</li> </ul>	Subject	Subject	Not Subject
<ul style="list-style-type: none"> <li>Employee salary reduction for dependent care assistance, accident, health, and/or group-term life insurance.</li> </ul>	Not Subject	Not Subject	Not Subject
<ul style="list-style-type: none"> <li>Employee salary reductions to a health savings account.</li> </ul>	Subject	Subject	Subject
<ul style="list-style-type: none"> <li>Cash payments in lieu of qualified benefits.</li> </ul>	Subject	Subject	Subject
<ul style="list-style-type: none"> <li>Contributions into cafeteria plan for adoption assistance.</li> </ul>	Subject	Subject	Not Subject
<b>DEPENDENT CARE ASSISTANCE</b> <ul style="list-style-type: none"> <li>Employer payments not to exceed \$5,000; \$2,500 if married filing separately. The maximum assistance has been in effect since January 1, 1987.</li> </ul>	Not Subject	Not Subject	Not Subject
<b>DISASTER RELIEF PAYMENTS</b> <ul style="list-style-type: none"> <li>Employer payments that qualify as disaster relief payments as defined in Section 139 of the Internal Revenue Code.</li> <li>Amounts paid by an employer by reason of the death of an employee who is a specified terrorist victim.</li> </ul>	Subject	Subject	Not Subject
<ul style="list-style-type: none"> <li>Amounts paid by an employer by reason of the death of an employee who is a specified terrorist victim.</li> </ul>	Not Subject	Not Subject	Not Subject
<b>EDUCATIONAL ASSISTANCE</b> <ul style="list-style-type: none"> <li>Educational assistance payments under Section 127 of the Internal Revenue Code excluded from gross income for undergraduate and graduate level courses not to exceed \$5,250 per calendar year.</li> </ul>	Not Subject	Not Subject	Not Subject
<b>FRINGE BENEFITS</b> <u>No-Additional-Cost Services:</u> <ul style="list-style-type: none"> <li>Service* provided to an employee when the employer incurs no substantial additional cost in providing the service and the service is offered to customers in the ordinary course of the employer's business.</li> </ul> <p><b>*Excess capacity airline, bus, train, and subway tickets; hotel rooms, etc.</b></p> <u>Qualified Employee Discounts:</u> <ul style="list-style-type: none"> <li>Discounts* offered to employees for the same services or merchandise offered to customers in the ordinary course of the employer's business.</li> </ul> <p><b>*The maximum discount is 20 percent on services or the gross profit percentage on merchandise.</b></p> <u>Working Condition Fringes:</u> <ul style="list-style-type: none"> <li>Any property or service that would be allowable to the employee as a business expense or as a depreciation deduction.</li> </ul> <p>Business use of an employer-provided vehicle or use of a qualified demonstration automobile. Educational assistance and training provided to the employees that are not excludable from gross income under Section 127 of the Internal Revenue Code.</p>	Not Subject	Not Subject	Not Subject
<ul style="list-style-type: none"> <li>Discounts* offered to employees for the same services or merchandise offered to customers in the ordinary course of the employer's business.</li> </ul>	Not Subject	Not Subject	Not Subject
<ul style="list-style-type: none"> <li>Any property or service that would be allowable to the employee as a business expense or as a depreciation deduction.</li> </ul>	Not Subject	Not Subject	Not Subject

TYPE OF BENEFIT	CALIFORNIA		
	UI/ETT	SDI	PIT

<b>FRINGE BENEFITS (Continued)</b>			
<u>De Minimis Fringes:</u>			
<ul style="list-style-type: none"> <li>The value of property or service which is so small as to make accounting for it unreasonable or administratively impracticable.</li> </ul>	Not Subject	Not Subject	Not Subject
Meals: Coffee, doughnuts, or soft drinks; meals provided at an employer-operated eating facility for employees. Other: Holiday gifts; tickets for entertainment or sporting events; life insurance on spouse or dependent face amount less than \$2,000.			
<u>Qualified Athletic Facility:</u>			
<ul style="list-style-type: none"> <li>Any gym or other athletic facility provided by an employer to its employees.</li> </ul>	Not Subject	Not Subject	Not Subject
The employer must own or lease the facilities; operate or contract out the operation; and substantially all use of the facility during the calendar year is by employees of the employer, their spouses, and their dependent children.			
<u>Qualified Transportation Reimbursements:</u>			
<ul style="list-style-type: none"> <li>Employee commuting benefits.</li> </ul>	Not Subject	Not Subject	Not Subject*
Transit passes, tokens, cash reimbursements for mass transit use, vanpooling, and/or employer-provided parking, up to a fair market value not exceeding the limits established in Section 132(f) of the Internal Revenue Code.			
<b>*For PIT purposes only, there are no monetary limits.</b>			
<u>Qualified Moving Expense Reimbursement:</u>			
<ul style="list-style-type: none"> <li>Any amount which would be deductible as a moving expense under Section 217 of the Internal Revenue Code.</li> </ul>	Not Subject	Not Subject	Not Subject*
<b>*For PIT purposes only, California conforms to federal law under Section 217 of the Internal Revenue Code.</b>			
<b>For UI, ETT, and SDI, there is an exemption if at the time of payment, it is reasonable to believe that the employee is entitled to a deduction under Section 217 of the Internal Revenue Code (Section 937 of the CUIC).</b>			
<u>Qualified Retirement Planning Services:</u>			
<ul style="list-style-type: none"> <li>Fringe benefit excluded from gross income under Section 132 of the Internal Revenue Code for retirement planning advice or information provided to an employee and his or her spouse by an employer maintaining a qualified employer plan.</li> </ul>	Not Subject	Not Subject	Not Subject
<b>GROUP LEGAL SERVICES</b>			
	Subject	Subject	Subject
<b>HEALTH SAVINGS ACCOUNT (HSA)</b>			
<ul style="list-style-type: none"> <li>Employer contributions to a qualified plan on behalf of an employee, the employee's spouse, and/or the employee's dependent(s).</li> <li>Employee salary reductions to a qualified plan.</li> </ul>	Subject	Subject	Subject
	Subject	Subject	Subject
<b>HEALTH, SICKNESS, ACCIDENT, DENTAL, AND OPTICAL PLANS</b>			
<ul style="list-style-type: none"> <li>Employer contributions to a qualified plan on behalf of an employee, as well as the employee's spouse and/or dependent(s).</li> <li>Employer-provided accident or health coverage or medical reimbursements paid for an employee's domestic partner.*</li> <li>Employee salary reductions to a qualified plan.**</li> </ul>	Not Subject	Not Subject	Not Subject***
	Not Subject	Not Subject	Not Subject
	Subject	Subject	Subject
<b>*Effective January 1, 2002, the Personal Income Tax law was amended to extend the tax benefits of employer-provided coverage under accident and health plans to domestic partners (as defined in Section 297 of the Family Code). Such payments are excluded from PIT wages as well as PIT withholding.</b>			
<b>**Contributions are exempt when included in a qualified Cafeteria Plan.</b>			
<b>***For PIT purposes, subject for 2 percent shareholder/employee of S corporations.</b>			
<b>LIFE INSURANCE</b>			
<ul style="list-style-type: none"> <li>Group term insurance with a face amount of \$50,000 or less.</li> <li>Group term insurance with a face amount in excess of \$50,000.</li> <li>All other life insurance premiums.</li> </ul>	Not Subject	Not Subject	Not Subject
	Not Subject	Not Subject	Not Subject*
	Not Subject	Not Subject	Subject
<b>*Although PIT withholding is not required, it is reportable as PIT wages.</b>			

TYPE OF BENEFIT	CALIFORNIA		
	UI/ETT	SDI	PIT
<b>MEALS AND LODGING</b> <ul style="list-style-type: none"> <li>Meals furnished for the employer's convenience and on the employer's premises.</li> <li>Lodging furnished for the employer's convenience, on the employer's premises, and as a condition of employment.</li> </ul>	Subject	Subject	Not Subject
	Subject	Subject	Not Subject
<b>MEDICAL SAVINGS ACCOUNT</b> <ul style="list-style-type: none"> <li>Employee contributions.</li> <li>Employer contributions.</li> </ul>	Subject	Subject	Subject
	Subject	Subject	Not Subject
<b>MOVING EXPENSES</b> <ul style="list-style-type: none"> <li>Employer paid or reimbursed expenses for moving household goods, personal effects, and traveling expense.</li> </ul>	Not Subject	Not Subject	Not Subject*
<p><b>*For PIT purposes only, California conforms to federal law under Section 217 of the Internal Revenue Code. For UI, ETT, and SDI, there is an exemption if, at the time of payment, it is reasonable to believe that the employee is entitled to a deduction under Section 217 of the Internal Revenue Code (Section 937 of the CUIC).</b></p>			
<b>RETIREMENT PLANS</b> <ul style="list-style-type: none"> <li>Employer contributions to a qualified plan.</li> <li>Employee salary reduction contributions to a qualified plan.</li> <li>Contributions to a nonqualified deferred compensation plan.</li> </ul>	Not Subject	Not Subject	Not Subject
	Subject	Subject	Not Subject
	Subject	Subject	Subject
<b>SCHOLARSHIPS AND FELLOWSHIPS</b> <ul style="list-style-type: none"> <li>Qualified tuition and related expenses as provided under Section 117 of the Internal Revenue Code.</li> </ul>	Not Subject	Not Subject	Not Subject
<b>TUITION PROGRAMS*</b> <ul style="list-style-type: none"> <li>Employer contributions to a qualified plan.</li> <li>Employee/participant contributions to a qualified plan.</li> </ul>	Subject	Subject	Subject
	Not Subject	Not Subject	Not Subject
<p><b>*For example, the Golden State Scholarshare Trust. Prior to 2002, only a state could establish and maintain a Qualified Tuition Program. Beginning in 2002, educational institutions also may establish and maintain a qualified tuition program. Employer contributions are subject to taxes, and employee contributions are made from earnings that have already been taxed.</b></p>			
<b>VACATION AND SICK PAY</b> <ul style="list-style-type: none"> <li>Employer paid vacation.</li> <li>Vacation and sick pay earned but not paid until after termination of employment.</li> <li>Sick leave payments for the first full six calendar months.</li> <li>Sick payments made a full six calendar months following the last month in which the employee performed services.</li> <li>Third-party payments of sick pay.</li> </ul>	Subject	Subject	Subject
	Not Subject	Not Subject	Subject
	Subject	Subject	Subject
	Not Subject	Not Subject	Subject
	Subject*	Not Subject	Not Subject
<p><b>*Exempt if payments are made more than six months after the last calendar month in which the employee worked.</b></p>			

This information sheet is provided as a public service and is intended to provide nontechnical assistance. Every attempt has been made to provide information that is consistent with the appropriate statutes, rules, and administrative and court decisions. Any information that is inconsistent with the law, regulations, and administrative and court decisions is not binding on either the Employment Development Department or the taxpayer. Any information provided is not intended to be legal, accounting, tax, investment, or other professional advice.