

1996



Department of the Treasury
Internal Revenue Service

Instructions for Form 940

Employer's Annual Federal Unemployment (FUTA) Tax Return

Section references are to the Internal Revenue Code unless otherwise noted.

Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by Code section 6103.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping.....	11 hr., 43 min.
Learning about the law or the form	18 min.
Preparing and sending the form to the IRS	30 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. Do not send the tax form to this office. Instead, see **Where To File** on page 2.

Items to Note

FUTA Tax Rate and Wage Base.— The FUTA tax rate is 6.2% through 1998, and the Federal wage base is \$7,000. Your state wage base may be different.

Exemption for Alien Agricultural Workers.— The exclusion from FUTA tax of wages paid to H-2(A) visa farmworkers was reinstated as a permanent exclusion for services performed after 1994. If you paid FUTA tax on wages paid to these workers in 1995, file an amended return to get a refund. See **Amended Return** on page 3.

Household Employers.— If you have only household employees, do not make deposits of FUTA tax. Instead, report and pay FUTA tax on **Schedule H (Form 1040)**, Household Employment Taxes, with your individual income tax return (e.g., Form 1040 or 1040A), or estate or trust tax return (Form 1041).

State Unemployment Information.— Employers must contact their state unemployment insurance offices to receive their state reporting number, state experience rate, and details about their state unemployment tax obligations.

Electronic Deposit Requirement.— If your total deposits of social security, Medicare, railroad retirement, and withheld income taxes were more than \$50,000 in 1995, you must make electronic deposits for **all** depository tax liabilities (including FUTA tax) that occur after June 30, 1997. For more information, see **Electronic Deposit Requirement** on page 3.

New Law for 1997.— New laws that affect employer payments for medical savings accounts (MSA), SIMPLE retirement accounts, and adoption assistance programs are effective after 1996. Payments to an MSA are not subject to FUTA tax. Employer contributions under a SIMPLE retirement account are

not subject to FUTA tax, but elective salary reduction contributions are subject to FUTA tax. Payments under adoption assistance programs are subject to FUTA tax. For more information on these and other changes, see the 1997 **Circular E**, Employer's Tax Guide (Pub. 15), and **Pub. 553**, Highlights of 1996 Tax Changes.

General Instructions

Purpose of Form.— File Form 940 to report your annual Federal unemployment (FUTA) tax. You, as the employer, must pay this tax. Do not collect or deduct it from your employees' wages.

Use **Form 940-EZ**, Employer's Annual Federal Unemployment (FUTA) Tax Return, a simpler version of Form 940, to report your annual FUTA tax if—

1. You paid unemployment taxes ("contributions") to only one state.
2. You paid all state unemployment taxes by January 31.
3. All wages that were taxable for FUTA tax were also taxable for your state's unemployment tax. If, for example, you paid wages to corporate officers (these wages are taxable for FUTA tax) in a state that exempts these wages from its unemployment tax, you cannot use Form 940-EZ.

Note: A successor employer must file Form 940.

For details, get Form 940-EZ. **Do not file Form 940 if you have already filed Form 940-EZ for 1996.**

Use the current year form to avoid delays in processing.

Who Must File.— In general, you must file Form 940 if either of the following tests applies (household and agricultural employers see below):

1. You paid wages of \$1,500 or more in any calendar quarter in 1995 or 1996; or
2. You had one or more employees for some part of a day in any 20 or more weeks in 1995 or 20 or more weeks in 1996.

Count all regular, temporary, and part-time employees. A partnership should not count its partners.

Note: If there is a change in ownership or other transfer of business during the year, each employer who meets test 1 or 2 must file.

Nonprofit Organizations.— Religious, educational, charitable, etc., organizations described in section 501(c)(3) and exempt from tax under section 501(a) are not subject to FUTA tax and are not required to file

Household Employers.— File a FUTA tax return **ONLY** if you paid cash wages of \$1,000 or more in any calendar quarter in 1995 or 1996 for household work in a private home, in most cases, must file **Schedule H (Form 1040)** instead of Form 940 or 940-EZ. See the instructions for Schedule H. In some cases, such as when you employ both household employees and other employees, you may have the option to report social security, Medicare, and withheld Federal income taxes for your household employee(s) on Form 941 or 943 instead of on Schedule H. If you reported your household employee's wages on Form 941 or 943, you must use Form 940 or 940-EZ to report FUTA tax.

Agricultural Employers.— File Form 940 if either test below applies to you:

1. You paid cash wages of \$20,000 or more to farmworkers during any calendar quarter in 1995 or 1996; or
2. You employed 10 or more farmworkers during some part of a day (whether or not at the same time) for at least 1 day during any 20 different weeks in 1995 or 1996.

Count wages paid to aliens admitted on a temporary basis to the United States to perform farmwork, also known as workers with "H-2(A)" visas, to see if you meet either test. However, wages paid to H-2(A) visa workers are **not** subject to FUTA tax. **Magnetic Media Reporting.**— You may file Form 940 using magnetic media. See Rev. Proc. 96-18, 1996-4 I.R.B. 73, for the procedures and **Pub. 1314** for the tape specifications.

Penalties and Interest.— Avoid penalties and interest by making tax deposits when due, filing a correct return, and paying the proper amount of tax when due. The law provides penalties for late deposits and late filing unless you show reasonable cause for the delay. If you file late, attach an explanation to the return. Get Circular E for information on penalties.

There are also penalties for willful failure to pay tax, keep records, make returns, and filing false or fraudulent returns.

Not Liable for FUTA Tax.— If you receive Form 940 and are not liable for FUTA tax for 1996, write "Not Liable" across the front, sign the return, and return it to the IRS.

Credit for Contributions Paid Into State Funds.— You can claim credit for amounts you pay into a certified state (including Puerto Rico and the Virgin Islands) unemployment fund by the due date of Form 940. Your FUTA tax will be higher if you do not pay the state contributions timely.

"Contributions" are payments that state law requires you to make to an unemployment fund because you are an employer. These payments are contributions only to the extent that they are not deducted or deductible from the employees' pay.

Do not take credit for penalties, interest, or special administrative taxes that are not included in the contribution rate the state assigned to you. Do not take credit for voluntary contributions paid to get a lower assigned rate.

You may receive an additional credit if you have an experience rate lower than 5.4% (.054). This applies even if your rate is different during the year. This **additional** credit is equal to the difference between actual payments and the amount you would have been required to pay at 5.4%.

The total credit allowable may not be more than 5.4% of the total taxable FUTA wages.

Special Credit for Successor Employers.— A successor employer is an employer who received a unit of an employer's trade or business or all or most of the property used in the trade or business of another employer. The successor employer must employ one or more individuals who were employed by the previous owner immediately after the acquisition.

You may be eligible for a credit based on the state unemployment contributions paid by the previous employer. You may claim these credits if you are a successor employer and acquired a business in 1996 from a previous employer who was not required to file Form 940 or 940-EZ for 1996. **If you are eligible to take this credit, you must file Form 940; you cannot use Form 940-EZ.** See section 3302(e). Enter in Part II, line 3, columns (a) through (i) the information of the predecessor employer as if you paid the amounts.

Successor employers may be able to count the wages that the previous employer paid to their employees when reporting the payments for services that exceed \$7,000 on line 3, Part I. See the instructions for line 3 on page 3.

When To File.— File Form 940 by January 31, 1997. However, if you deposited all tax when due, you have until February 10, 1997, to file your return. Your form is filed on time if it is properly addressed and postmarked no later than the due date.

Where To File.— In the list below, find the state where your legal residence, principal place of business, office, or agency is located. Send your return to the **Internal Revenue Service** at the address listed for your location. No street address is needed.

Note: *Where you file depends on whether or not you are including a payment.*

Florida, Georgia, South Carolina

Return without payment:
Atlanta, GA 39901-0006

Return with payment:
P.O. Box 105887
Atlanta, GA 30348-5887

New Jersey, New York (New York City and counties of Nassau, Rockland, Suffolk, and Westchester)

Return without payment:
Holtsville, NY 00501-0006

Return with payment:
P.O. Box 1365
Newark, NJ 07101-1365

New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Return without payment:
Andover, MA 05501-0006

Return with payment:
P.O. Box 371307
Pittsburgh, PA 15250-7307

Illinois, Iowa, Minnesota, Missouri, Wisconsin

Return without payment:
Kansas City, MO 64999-0006

Return with payment:
P.O. Box 970010
St. Louis, MO 63197-0010

Delaware, District of Columbia, Maryland, Pennsylvania, Puerto Rico, Virginia, Virgin Islands

Return without payment:
Philadelphia, PA 19255-0006

Return with payment:
P.O. Box 8726
Philadelphia, PA 19162-8726

Indiana, Kentucky, Michigan, Ohio, West Virginia

Return without payment:
Cincinnati, OH 45999-0006

Return with payment:
P.O. Box 6977
Chicago, IL 60680-6977

Kansas, New Mexico, Oklahoma, Texas

Return without payment:
Austin, TX 73301-0006

Return with payment:
P.O. Box 970017
St. Louis, MO 63197-0017

Alaska, Arizona, California (counties of Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba), Colorado, Idaho, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming

Return without payment:
Ogden, UT 84201-0006

Return with payment:
P.O. Box 7024
San Francisco, CA 94120-7024

California (all other counties), Hawaii

Return without payment:
Fresno, CA 93888-0006

Return with payment:
P.O. Box 60378
Los Angeles, CA 90060-0378

Alabama, Arkansas, Louisiana, Mississippi, North Carolina, Tennessee

Return without payment:
Memphis, TN 37501-0006

Return with payment:
P.O. Box 1210
Charlotte, NC 28201-1210

FUTA Tax Amount To Deposit.— Although Form 940 covers a calendar year, you may have to make deposits of the tax before filing the return. Determine your FUTA tax for each of the first three quarters by multiplying by .008 that part of the first \$7,000 of each employee's annual wages that you paid during the quarter. If any part of the amounts paid are exempt from state unemployment tax, you may deposit more than the .008 rate. For example, in certain states, wages paid to corporate officers, certain payments of sick pay by unions, and certain fringe benefits, are exempt from state unemployment tax.

If your liability for any of the first three quarters of 1996 (plus any undeposited amount of \$100 or less from any earlier quarter) is over \$100, deposit it by the last day of the month after the end of the quarter. If it is \$100 or less, carry it to the next quarter; a deposit is not required. If your liability for the fourth quarter (plus any undeposited amount from any earlier quarter) is over \$100, deposit the entire amount by January 31, 1997. If it is \$100 or less, you can either make a deposit or pay it with your Form 940 by January 31.

The deposit due dates are shown in the following chart:

If undeposited FUTA tax is over \$100 on—	Deposit it by—
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

How To Deposit.— Use **Form 8109**, Federal Tax Deposit Coupon, when you make each tax deposit (**Caution:** Please see **Electronic Deposit Requirement** below.) The IRS will send you a book of deposit coupons when you apply for an employer identification number (EIN). Follow the instructions in the coupon book. If you do not have coupons, see **Depositing Taxes** in Circular E.

Make your deposits with an authorized financial institution (e.g., a commercial bank that is qualified to accept Federal tax deposits) or the Federal Reserve bank for your area. To avoid a possible penalty, do not mail deposits directly to the IRS. Records of your deposits will be sent to the IRS for crediting to your business accounts.

Identifying Your Payments.— Write your EIN, “Form 940,” and the tax year to which the payment applies on your check or money order. This will help ensure proper crediting of your account. On balance due payments of \$100 or less (Part II, line 9), make your check or money order payable to the “Internal Revenue Service.” Enter the amount of the payment on the payment voucher at the bottom of Form 940. If the employer information is not preprinted on the payment voucher, enter the requested information. On payments over \$100 that you are depositing, make your check or money order payable to the depository or Federal Reserve bank where you make your deposit.

Electronic Deposit Requirement.— If your total deposits of social security, Medicare, railroad retirement, and withheld income taxes were more than \$50,000 in 1995, you must make electronic deposits for all depository tax liabilities (including FUTA tax) that occur after June 30, 1997. If you were required to deposit by electronic funds transfer in prior years, continue to do so in 1997. The **Electronic Federal Tax Payment System (EFTPS)** must be used to make electronic deposits. If you are required to make deposits by electronic funds transfer and fail to do so, you may be subject to a 10% penalty. Taxpayers who are not required to make electronic deposits may voluntarily participate in EFTPS. For information on EFTPS, call 1-800-945-8400 or 1-800-555-4477. (These numbers are for EFTPS information only.)

Specific Instructions

Employer's Name, Address, and Employer Identification Number.— Use the preaddressed Form 940 mailed to you. If you must use a form that is not preaddressed, type or print your name, trade name, address, and EIN on it. If you do not receive your EIN by the time a return is due, write “Applied for” and the date you applied for the number.

Questions A through C.— The answers to the questions will direct you to the correct form to file. If you answered “Yes” to all the questions, you may file Form 940-EZ, a simpler version of Form 940. If you answer “No” to any of the questions or you are a successor employer claiming a credit for state unemployment contributions paid by the prior employer, complete and file Form 940.

Final Return.— If you will not have to file returns in the future, check the box on the line below question C. Then complete and sign the return. If you start paying FUTA wages again, file Form 940 or 940-EZ.

Amended Return.— Be sure to use a Form 940 for the year you are amending. Check the amended return box above Part I. File the amended return with the Internal Revenue Service Center where you filed the original return. Complete and sign a new Form 940 with the correct amounts for the tax year you are correcting. Attach a statement explaining why you are filing an

amended return. For example, you are filing to claim the 90% credit for contributions paid to your state unemployment fund after the due date of Form 940.

If you are filing an amended return after June 30 to claim contributions to your state's unemployment fund that you paid after the due date of Form 940, attach a copy of the certification from the state. This will expedite the processing of the amended return.

Part I—Computation of Taxable Wages

Line 1—Total payments.— Enter the total payments you made during the calendar year for services of employees, even if they are not taxable for FUTA tax. Include salaries, wages, commissions, fees, bonuses, vacation allowances, amounts paid to temporary or part-time employees, the value of goods, lodging, food, clothing, and noncash fringe benefits, section 125 (cafeteria) plan benefits and sick pay (including third party if liability transferred to employer). For details on sick pay, see **Pub. 15-A**, Employer's Supplemental Tax Guide. Include tips reported to you by your employees. Also, include contributions to a 401(k) pension plan. Enter the amount before any deductions.

How the payments are made is not important in determining if they are wages. Thus, you may pay wages for piecework or as a percentage of profits, and you may pay wages hourly, daily, weekly, monthly, or yearly. You may pay wages in cash or some other way, such as goods, lodging, food, or clothing. For items other than cash, use the fair market value at the time of payment.

Line 2—Exempt payments.— For FUTA purposes, “wages” and “employment” do not include every payment and every kind of service an employee may perform. In general, payments excluded from wages and payments for services excepted from employment are not subject to tax. The amounts reported on line 2 are exempt from FUTA tax. You may deduct these exempt payments from total payments only if you explain them on line 2. Amounts that may be exempt from your state's unemployment tax, for example, corporate officers' wages, may not be exempt from FUTA tax.

Enter payments such as the following on line 2:

1. Agricultural labor if you did not meet either of the tests in **Agricultural Employers** on page 1.
2. Benefit payments for sickness or injury under a worker's compensation law.
3. Household service if you did not pay total cash wages of \$1,000 or more in any calendar quarter in 1995 or 1996, and you included the amount on line 1.
4. Certain family employment.
5. Certain fishing activities.
6. Noncash payments for farmwork or household services in a private home that are included on line 1. Only cash wages to these workers are taxable.
7. Value of certain meals and lodging.
8. Cost of group-term life insurance.
9. Payments attributable to the employee's contributions to a sick-pay plan.
10. Benefits excludable under a section 125 (cafeteria) plan.
11. Any other exempt service or pay.

For more information, see **Special Rules for Various Types of Services and Payments**, in Circular E.

Line 3—Payments for services of more than \$7,000.— Enter the total amounts over \$7,000 you paid each employee. For example, if you have 10 employees and paid each \$8,000 during the year, enter \$80,000 on line 1 and \$10,000 on line 3. **Only the first \$7,000 paid to each employee is subject to FUTA tax. Do not use the state wage limitation for this entry. Generally, the state wage base is a different amount than the Federal wage base of \$7,000. Do not include any exempt payments from line 2 in figuring the \$7,000.**

Successor Employer.— If you acquired a business from an employer who was liable for FUTA tax, you may count the wages that employer paid to the employees who continue to work for

you when you figure the \$7,000 wage base. Enter on line 3 the payments that exceed the \$7,000 wage base, including the payments by the previous employer. See section 3306(b)(1) and Regulations section 31.3306(b)(1)-1(b).

Line 5—Total taxable wages.— This is the total Federal taxable wage amount. Use this amount in Part II to compute the maximum FUTA tax and the maximum credit.

Part II—Tax Due or Refund

Line 1—Gross FUTA tax.— Multiply the total taxable wages in Part I, line 5, by .062. This is the maximum amount of FUTA tax.

Line 2—Maximum credit.— Multiply the total taxable wages in Part I, line 5, by .054. This is the maximum credit that is used to offset FUTA tax.

Line 3—Computation of tentative credit.— You must complete all applicable columns to receive any credit. Your state will provide an experience rate. If you have been assigned an experience rate of 0% or more, but less than 5.4% for all or part of the year, use columns (a) through (i). If you have not been assigned any experience rate, use columns (a), (b), (c), and (i) only. If you have been assigned a rate of 5.4% or higher, use columns (a), (b), (c), (d), (e), and (i) only. If you were assigned an experience rate for only part of the year or the rate was changed during the year, complete a separate line for each rate period.

If you need additional lines, attach a separate statement with a similar format. Also, if you are a successor employer, see **Special Credit for Successor Employers** on page 2.

Column (a)— Enter the two-letter abbreviation of the state(s) to which you were required to pay contributions (including Puerto Rico and the Virgin Islands).

Column (b)— Enter the state reporting number that was assigned to you when you registered as an employer with each state. Failure to enter the correct number may result in unnecessary correspondence.

Column (c)— Enter the state taxable payroll on which you must pay state unemployment taxes for each state shown in column (a). If your experience rate is 0%, enter the wages that you would have had to pay on if the rate had not been granted.

Column (d)— Enter the beginning and ending dates of the experience rate shown in column (e).

Column (e)— Your state experience rate is the rate the state assigned to you for paying your state unemployment tax. This rate may change based on your “experience” with the state unemployment fund, for example, because of unemployment compensation paid to your former employees. If you do not know your rate, contact your state unemployment insurance service. The state experience rate can be stated as a percent or a decimal.

Column (f)— Multiply the amount in column (c) by .054.

Column (g)— Multiply the amount in column (c) by the rate in column (e).

Column (h)— Subtract column (g) from column (f). If zero or less, enter “0.” This additional credit is the difference between 5.4% and the state experience rate.

Column (i)— Enter the contributions actually paid to the state unemployment fund by the due date for filing Form 940. **Do not include amounts you are required to pay but have not paid by the Form 940 due date.** See **Amended Return** on page 3. If you are **filing after the due date**, include all payments made before the return is filed and see the instructions for line 3b below. If you are **claiming excess credits** as payments of state unemployment contributions, attach a copy of the letter from your state. **Do not include** any penalties, interest, or special administrative taxes (such as surcharges, employment and training taxes, excise tax, and assessments which are generally listed as a separate item on the state’s quarterly wage report) not included in the experience rate assigned to you.

Line 3a—Totals.— Enter the totals of columns (c), (h), and (i).

Line 3b—Total tentative credit.— Add line 3a, columns (h) and (i) only. If you **file Form 940 after its due date** and any contributions in column (i) were made after the due date for filing Form 940, your credit for late contributions is limited to **90%** of the amount which would have been allowable as a credit if such contributions were paid on or before the due date for filing Form 940. For example, you paid \$1,500 of state contributions on time and \$1,000 after the due date for filing Form 940. There is no additional credit in column (h). Enter \$2,500, your total state contributions, in column (i). Your total tentative credit on line 3b is \$2,400 (\$1,500 (timely payment) + \$900 (90% of \$1,000)). Because the 90% limit applies to part of your payment, explain below the signature line how you computed the amount on line 3b.

Note: *If you are receiving additional credit (column (h)) because your state experience rate is less than 5.4%, the additional credit is not subject to the 90% limitation.*

Line 6—Credit.— Enter the smaller of Part II, line 2 or line 3b. This is the credit allowable for your payments to state unemployment funds. If you do not have to make payments to the state, enter zero on this line.

Part III—Record of Quarterly Federal Unemployment Tax Liability

Complete this part if your total tax (Part II, line 7) is over \$100. To figure your FUTA tax liability **for each of the first three quarters of 1996**, see **FUTA Tax Amount To Deposit** on page 2. Enter this amount in the column for that quarter. This is your tax liability, not your deposit.

Your liability for the fourth quarter is the total tax (Part II, line 7) minus your liability for the first three quarters of the year. The total liability must equal your total tax. Otherwise, you may be charged a failure to deposit penalty figured on your average liability.