

Office of Chief Counsel  
Internal Revenue Service

SCA 1998-046  
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# memorandum

CC:EBEO  
TL-N-1450-98

date: APR 24 1998

to: District Counsel  
Virginia-West Virginia District  
(CC:SER:VWV:RCH)

from: Mary E. Oppenheimer, Assistant Chief Counsel  
(Employee Benefits and Exempt Organizations)

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subject: Significant Service Center Advice  
W-2 Reporting of Elective Deferrals under USERRA  
TL-N-1450-98

## Disclosure Statement

Unless specifically marked "Acknowledged Significant Advice, May Be Disseminated" above, this memorandum is not to be circulated or disseminated except as provided in CCDM (35)2(13)3:(4)(d) and (35)2(13)4:(1)(e). This document may contain confidential information subject to the attorney-client and deliberative process privileges. Therefore, this document shall not be disclosed beyond the office or individual(s) who originated the question discussed herein and are working the matter with the requisite "need to know." In no event shall it be disclosed to taxpayers or their representatives.

This is in response to your inquiry on behalf of the Martinsburg Computing Center, concerning the Form W-2 reporting requirements of elective deferral "make-up contributions" made pursuant to section 414(u) of the Code and the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

### **Issue**

Where on the Form W-2 are make-up contributions pursuant to USERRA to be reported.

### **Conclusion**

The instructions state that make-up contributions are to be reported in Box 13 of Form W-2, using the code D and identifying the years to which the contributions relate.

### **Discussion**

Code section 6051(a), in relevant part, imposes a reporting requirement on every person required to deduct and withhold from an employee a tax under section 3101 or 3402. The employer is required to furnish a written statement showing, among other items, "the total amount of elective deferrals (within the meaning of section 402(g)(3)) and compensation deferred under section 457." Section 6051(a)(8).

The Martinsburg Computing Center has received many requests asking where on the Form W-2 this information should be reported.

Attached are copies of pages 1, 6, and 7 of the final proof instructions to the latest Form W-2. The instructions say that these amounts should be reported in Box 13 of Form W-2, using the code D and identifying the years to which the contributions relate. Please note that, as you requested, we also faxed copies of these pages to Martinsburg directly as an expedited response.

If we can be of further assistance on this question, please call Elizabeth Edwards of this office at (202) 622-6040.

MARY E. OPPENHEIMER

By: \_\_\_\_\_/s/\_\_\_\_\_  
PATRICIA M. MCDERMOTT  
Senior Technical Reviewer  
Branch 2, CC:EBEO

attachment: Instructions for Form W-2, pp. 1, 6, 7

cc:

Karen von Fossen, Executive Assistant to the National Director  
Customer Service Compliance, Accounts & Quality T:C:A

Pat Hudak, Executive Assistant to the National Director  
Submissions Processing  
ATTN: Lisa Johnson T:S

Arlene A. Blume, TSS Supervisor  
Room 4510, CC:DOM:FS, IRS Building