Frequently asked IRS questions

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Branch officers often call NALC Headquarters with questions about financial issues. After the question is answered, the branch officer may be directed to the *NALC Branch Officer's Guide to Finance and Administration*, available for purchase from the NALC Supply Department or for free on the NALC website from the secretary-treasurer's page. The guide is broken down into the following sections: branch officer duties, NALC dues, reporting to the U.S. Department of Labor, reporting to the IRS, bonding requirements and branch recordkeeping. If your branch secretary/treasurer does not have this guide, I suggest that the branch get one for use by all fiduciary officers in the branch.

The following is a sample of common IRS-related questions asked during phone calls or during training seminars, as well as the answers and where the answers can be found in the *NALC Branch Officer's Guide to Finance and Administration*.

If we pay our stewards $150 per month as a stipend, do we have to file a W-2?

Yes. Stewards are considered to be employees of the branch (whether they are appointed by the branch president or elected by the branch membership) and, as such, the branch must report stipends as wages and withhold the appropriate taxes. This holds true for all officers of a branch receiving any payments that could be considered wages (see pages 4-4 and 4-5 of the guide).

I heard that if you stay under $600 per year paid to a branch officer, you don't have to do anything, not even issue a 1099. Is this true?

No. Again, officers are considered employees of the branch and, as such, the branch must deduct payroll taxes, and the branch must pay taxes since the branch is an employer. It does not matter how much money an employee earns; the branch must pay all payroll taxes and issue a W-2 (see page 4-7 of the guide). A Form 1099-MISC is issued under two circumstances: 1) The branch makes a payment under a non-accountable plan to a member who is not considered an employee under IRS tax rules (see pages 4-15 and 4-16 of the guide); and 2) The branch makes a payment to somebody who is not a member for services rendered to the branch, most commonly a contractor.

The 1099-MISC must be issued only for services rendered and not when payments are made to purchase goods. The 1099-MISC must be issued only when total payments to the individual are $600 or more during the tax year (see page 4-18 of the guide). However, this does not exempt the individual from claiming the extra income.

My branch/state association has been receiving notices from our state that we must purchase workers' compensation insurance. Is this true?

In all 50 states, if you pay any wages then you are considered an employer and workers' compensation insurance is mandatory (see page 4-7 of the guide). In some states, the insurance must be secured directly with the state fund. In most states, the premium and benefit structures are set by each state government but the actual insurance coverage is provided by standard insurance companies via your insurance agent. Volunteers and/or employees who receive very little compensation may be exempt from such coverage in some states. Check your state's website for further information and/or clarification.

Are there any documentation requirements for per diem payments?

Yes. The branch needs to maintain "proof" of an overnight stay. A hotel receipt, a copy of a round-trip plane ticket, or other similar documentation should be sufficient. The branch need not collect documentation (receipts) of the amount of expenses actually incurred. (See pages 4-13 through 4-17 of the guide for more information on per diem.)

Is an early payment to a hotel or airline considered a travel advance?

No. Making an early payment directly to a hotel or airline—or reimbursing a member for the actual cost of an airline ticket purchased in advance for approved branch travel—is not considered a travel advance.

Is it OK to give branch officers travel advances?

Travel advances are OK as long as the branch keeps certain rules in mind. To be in compliance with the rules outlined by the Labor Management Reporting and Disclosure Act, the sum of all advances to any one individual in a fiscal year should never exceed $2,000. Also, the officer receiving the advance should document expenditures against the advance and return to the branch any excess

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(1) final and conclusive for all purposes and with respect to all questions of law and fact; and

(2) not subject to review by another official of the United States or by a court by mandamus or otherwise.

Because decisions by OWCP are not subject to any other court or judicial review, the ECAB plays a vital role in ensuring that the process is fair and not arbitrary and capricious through issuing final decisions and setting precedent.

The ECAB, six years after its creation, discusses in *Yingling 4 ECAB 529* (1952), the legislative history of the Reorganization Plan of 1946, which created the ECAB and its judicial function. In *Yingling,* the Board—through seven detailed pages of reviewing the history and legislative intent behind the enabling legislation—concluded:

> [T]he Board is of the opinion, and so holds, that the regulations governing both the Bureau [now OWCP] and the Board, enabling the Board to weigh the evidence and to make a final decision on the merits of the case, constitute a valid exercise by the promulgating officials of authority lawfully derived from Reorganization Plan No. 2 of 1946 and Plan No. 19 of 1950 (p. 537).

The ECAB has established in various decisions over the years its interpretation of 5 USC 8149 as providing the Board with final review authority, much as the U.S. Supreme Court established the principle of its own judicial review authority in its 1803 *Marbury v Madison* decision.

For example, in *Kuyoth 27 ECAB 498* (1976), the Board held:

> Government questioned the authority of the Board to make a de novo review of decisions of the adjudicating agency, including all questions of law and fact. This matter has been settled since the Board was established in 1946. The Rules of Procedure of the Board issued by the Secretary of Labor specifically provide that, in deciding appeals from a final decision, "The Board may review all relevant questions of law, fact, and discretion in such cases." A similar regulation has existed since the inception of the Board...
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> ... **The Board has final authority to determine questions of law and fact. Its determinations are binding upon the Office and must, of necessity, be so accepted and acted upon by the Director. Otherwise, there could be no finality of decisions; the whole appeals procedure would be nullified, and the questions would remain moot.**
>
> These fundamental principles, regarding the authority of the Board to make a de novo review and make the final determination on questions of law and fact, have governed the Board without deviation from its inception to the present day. No basis has been found for changing these principles at this late date." pp. 498-499. (Emphasis added.)

The ECAB has also interpreted 5 U.S.C. § 8149 as granting final decision authority not subject to review by the Office:

> Section 8149 of the Federal Employees' Compensation Act provides that decisions of the Board on appeals taken from claims of employees are final. **The Office therefore does not have jurisdiction to review decisions by the Board**." Zerega 45 ECAB 860 (1994) p. 863. (Emphasis added.)

"The Office therefore does not have jurisdiction to review decisions by the Board."

Apparently, no longer.

Secretary-Treasurer

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funds for which documentation was not submitted.

In addition, IRS rules require an advance for expenses to be made within a reasonable time—generally no more than 30 days before the expenses are expected to be incurred. Under the LMRDA, an advance for expenses is considered a reportable loan unless the advance is provided within 30 days of travel and accounted for within 30 days following the trip (see page 4-21 of the guide). To avoid problems encountered when advances are not properly accounted for, it may be best to forgo advances and instead reimburse for actual expenses after receipts have been submitted or opt to provide per diem per the IRS guidelines.