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October 9, 2023

Circular 2023-11

To: ICRB Members

Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities

The ICRB has submitted an item filing, B-1449 which was approved by the Indiana Department of Insurance

PURPOSE

This item revises payroll rules related to service charges and automatic gratuities in NCCI's ***Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)***.

No statewide premium impact will result from the changes in this item.

For further details please see the Circular below.

Sincerely,

Paul E. Keathley

Paul E. Keathley, CAWC

President & CEO

Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities

Filing Memorandum

Purpose

This item revises payroll rules related to service charges and automatic gratuities in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*.

Background

NCCI conducted a comprehensive review of *Basic Manual* rules related to payroll inclusions and payroll exclusions to determine the appropriate treatment for service charges and automatic gratuities.

NCCI's *Basic Manual* rule, Rules for excluding from payroll tips or gratuities, excludes from payroll tips or other gratuities that are received by employees. In all states except Montana, NCCI's *Basic Manual* rules do not address the treatment of service charges or automatic gratuities. Additionally, the *Basic Manual* rule that excludes tips and gratuities does not address whether the intent of the rule is meant to exclude only tips and gratuities that are given voluntarily.

Banquet halls, country clubs, and private clubs traditionally add a service charge to food and beverage sales. In some cases, members or patrons can adjust the service charge; in others, the amount is a set percentage in place of a tip or gratuity. Additionally, many restaurants have changed their business models to include service charges. These service charges can be in place of, or in addition to, a tip.

NCCI completed research and gathered valuable feedback related to the treatment of service charges and automatic gratuities. Key points of this research and feedback are as follows:

- Tips are "discretionary" payments by a customer that employees receive from customers.
- Service charges are "forced" fees added by the employer through a bill or contract.
- The Internal Revenue Service's (IRS) Publication 15, Employer's Tax Guide states "Service charges aren't tips; therefore, withhold taxes on service charges as you would on regular wages."
- Regarding the inclusion of service charges in payroll, NCCI received valuable feedback from carriers, including members of NCCI's Underwriting Committee and discussions at several Policy Research Advisory Committee (PRAC) meetings.

Based on NCCI's research and carrier feedback, NCCI determined that it is appropriate to establish a *Basic Manual* rule stating that service charges and automatic gratuities are included in payroll and define service charges and automatic gratuities.

Proposal

This item proposes the following revisions to NCCI's *Basic Manual*:

1. Establish a new rule, Rules for including service charges and automatic gratuities in payroll, to specify that service charges and automatic gratuities are included in payroll when the customer does not
 - determine the amount of the payment
 - determine who receives the payment, and
 - have the ability to reduce the payment amount below the set percentage or fee.
2. Revise the rule, Rules for excluding from payroll tips or gratuities, to add a definition for tips and other gratuities.
3. Revise state rules in Connecticut and Nevada as described in the Exhibit Comments and Implementation Summary section.

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Impact

As part of NCCI’s continuing effort to simplify and clarify manual rules, we anticipate that the proposed changes will enhance the understanding of NCCI’s **Basic Manual**. An employer may see an increase in premium, dependent on whether the newly established rule related to payroll service charges and automatic gratuities is different from how the policy is currently being written.

Statewide premium impact is not quantifiable but is expected to be negligible.

Exhibit Comments and Implementation Summary

Exhibit	Exhibit Comments	Implementation Summary
1	<p>Details the establishment of the rule, Rules for including service charges and automatic gratuities in payroll (Rule ID: BM-PAYI-SCF23), in NCCI’s Basic Manual.</p> <ul style="list-style-type: none"> Applies in: AK, AL, AR, AZ, CO, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, NE, NH, NM, OK, OR, RI, SC, SD, TN, TX, UT, VA, VT, WV Refer to state exhibits for CT and NV 	<ul style="list-style-type: none"> In all states where applicable, except Hawaii, this item is to become effective for new and renewal policies with effective dates on and after 12:01 a.m. on January 1, 2024. In Hawaii, the effective date is determined upon regulatory approval of the individual carrier’s election to adopt this change.
2	<p>Details the revisions to the rule, Rules for excluding from payroll tips or gratuities (Rule ID: BM-PAYE-RAE1F), in NCCI’s Basic Manual.</p> <ul style="list-style-type: none"> Applies in: AK, AL, AR, AZ, CO, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, NE, NH, NM, OK, OR, RI, SC, SD, TN, TX, UT, VA, VT, WV Refer to state exhibits for CT and NV 	
State Exhibits		
3	<p>Details the revisions to the rule, Rules for excluding from payroll tips or gratuities (Rule ID: BM-PAYE-RAE1F), in NCCI’s Basic Manual for Connecticut to add the term "service charges."</p>	<p>This item is to become effective for new and renewal policies with effective dates on and after 12:01 a.m. on January 1, 2024.</p>

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3	Details the revisions to the rule, Rules for including tips or gratuities in payroll (Rule ID: BM-PAY1-R79CC), in NCCI's Basic Manual for Nevada to conform with NV ADC 616A.200(13) & (14).
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Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities

Exhibit 1

Basic Manual—Effective 2021

(Applies in: AK, AL, AR, AZ, CO, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD,

ME, MO, MS, NE, NH, NM, OK, OR, RI, SC, SD, TN, TX, UT, VA, VT, WV)

Rules for including service charges and automatic gratuities in payroll

Rule ID: BM-PAYI-SCF23

Effective Date: January 1, 2024

Include service charges and automatic gratuities received by employees in payroll. Only the amount of the service charge or automatic gratuity received by employees is included in payroll.

Service charges and automatic gratuities

Service charges and automatic gratuities are set percentages or fees added to a bill or contract where the customer does not

- determine the amount of the percentage or fee
- determine who receives the percentage or fee, and
- have the ability to reduce the payment amount below the set percentage or fee.

References

Refer to

- [Rules for excluding from payroll tips or other gratuities, and](#)
- NCCI's **Basic Manual User's Guide** for an example of service charges and automatic gratuities.

Exhibit 2

Basic Manual—Effective 2021

(Applies in: AK, AL, AR, AZ, CO, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD,
ME, MO, MS, NE, NH, NM, OK, OR, RI, SC, SD, TN, TX, UT, VA, VT, WV)

Rules for excluding from payroll tips or other gratuities

Rule ID: BM-PAYE-RAE1F

Effective Date: January 1, 2024

Exclude from payroll tips or other gratuities received by employees.

Tips or other gratuities

Tips or other gratuities are optional payments added to a bill or contract where the customer

- determines the amount of payment
- determines that the employees receive the payment for services provided, and
- has the option to not add a payment to the bill or contract.

References

Refer to [Rules for including service charges and automatic gratuities in payroll.](#)