

FEDERAL STATE AND LOCAL GOVERNMENTS

and
PUBLIC ENTITIES
WORKING TOGETHER



"HAND IN HAND"

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FSLG MISSION STATEMENT

- Provide Government Entities top quality service by helping them understand and comply with their tax responsibilities and by applying the tax law with integrity and fairness to all.



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Employee vs Contractor

General Guidance

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Independent Contractor or Employee?

- Review the factors involved in worker classification to assure proper tax treatment:
- Behavioral Control - how, when and where to do the work; training (the right to control)

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Independent Contractor or Employee?

- Financial Control - significant investment, expenses, opportunity for profit or loss
- Relationship of the Parties - employee benefits, written contracts

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Employees...

•SOME FACTORS THAT MAY INDICATE WORKERS ARE EMPLOYEES

- Required to wear uniforms
- Required to work certain hours
- Do not handle own sales receipts
- Do not make own appointments

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Employees...

- Owner provides training
- Owner provides supplies and materials
- Stands no risk of loss

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COMMON LAW EMPLOYEE IRC 3121(d)(2)

- EMPLOYER HAS RIGHT TO DIRECT AND CONTROL WORKER
- WORKER MAY BE PART TIME OR SEASONAL
- STRANGER, FRIEND, OR FAMILY
- BE SURE INDEPENDENTS NOT EMPLOYEES
- CALL US FOR APPOINTMENT



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Independent Contractor

•FACTORS THAT MAY INDICATE YOU ARE AN INDEPENDENT CONTRACTOR

- *Makes own schedule*
- *Buys own products*
- *Has own phone number*
- *furnishes own supplies*
- *furnishes own equipment*
- *makes a profit or loss as a result of his own business decisions*



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Independent Contractor or Employee??



- If you are not sure whether a worker is an employee or independent contractor, complete Form SS-8 and send to the Internal Revenue Service for determination

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PROBLEM AREAS IN GENERAL

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EMPLOYEE ATTORNEYS

- **Controlled Attorneys**
 - Town has the right to direct and control
- **Considered employees**
- **Receive Form W-2**
- **Should not receive Form W-2 and Form 1099-Misc**

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ELECTED OFFICIALS and JUDGES

- **Always employees**
- **Do not issue Form 1099-MISC in lieu of Form W-2**
- **Section 218 of the Social Security Act also mandates appointed officials be treated as employees, if compensated for services**

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"RETIRED" EMPLOYEES

- **Returning as "Independent Contractor"**
- **Subsequent payments of accumulated sick and vacation time**
- **Severance Pay or Early Out Payments**

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Others

- Part-time, temporary, probationary, tryouts, substitutes, passerbys, etc.
- Rehired Retirees
- Paid "Volunteers" – Fire Department, Parks and Recreation, etc.

Note: Remember, ask yourself, is it a separate trade of business?

Next Topic

FRINGE BENEFITS



Examples of Fringes

CASH

- AUTOMOBILES
- AWARDS, PRIZES
- CELLULAR PHONES
- EDUCATIONAL REIMBURSEMENTS
- SAVINGS BONDS
- ALLOWANCES
- MEAL MONEY (BASED ON HOURS WORKED)

NON-CASH

- GROUP TERM LIFE
- MOVING EXPENSES
- PARKING
- ER PROVIDED LIVING QUARTERS
- CLOTHING OTHER THAN CERTAIN UNIFORMS
- SPOUSAL TRAVEL
- SEASON TICKETS

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EXAMPLES OF EXCLUDED FRINGES

- Accident and health plans
- achievement awards
- athletic facilities
- de minimis fringes
- dependent care asst. programs
- educational assist
- employee discounts
- Group-term life
- lodging on employer's premises
- moving expenses reimbursements
- no-additional cost services
- tuition reduction
- working condition fringes

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TAXATION OF BENEFITS

- ALL REMUNERATION, CASH OR NON-CASH, ARE CONSIDERED GROSS INCOME UNLESS SPECIFICALLY EXEMPT BY LAW. (IRC 61)
- BUSINESS PORTION MAY BE EXCLUDED AS A "WORKING CONDITION" FRINGE BENEFIT...(IRC 132)
- PROVIDED THE RECORDKEEPING REQUIREMENTS OF IRC 274 ARE MET.

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Automobiles

■ PERSONAL USE CONSTITUTES

WAGES

■ VALUATION METHODS:

Cents per mile (rarely applicable)

Commuter rule (\$1.50 each

way/day) Annual Lease Valuation

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COMMUTER RULE

- **Must own or lease vehicle and provide vehicle to one or more employees**
- **Auto must be provided for bona fide non-compensatory reasons**
- **Must have written policy that prohibits personal use other than commuting or de minimis personal use.**
- **Cannot be used for Control employee**
- **Government Control employee is any elected official or employee whose salary exceeds \$146,400 as of March 27, 2013.**

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ANNUAL LEASE VALUATION

- **Annual Lease Value Table provides annual lease amount based on the fair market value of the automobile.**
- **Prorate annual lease amount based on percentage of personal use.**
- **Records must be maintained to show total miles and personal or business use.**
- **Employer may elect to tax 100% personal.**

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Exempt Vehicles

- Clearly Marked Police, Fire, Public Safety
- Unmarked Police Cars *
- Ambulances or Hearses
- Large Trucks
- School Buses



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EMPLOYEE ALLOWANCES



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Types of Allowances

- Car Allowance
- Uniform Allowance
- Moving Allowance
- Travel Advance
- Tool Allowance

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Cell Phones

- No longer classified as listed property
- No longer must account for minimal personal use
- Now treated similar to the office desk phone

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Reimbursement Personal Expenses

- Payment for meals, not away overnight
- Personal
- Uniforms must be **qualified**
 - Plain clothes detectives - reimbursed for suit, shirt, neck tie = Personal

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