

Township Federal Employment Tax Responsibilities

Whether workers who provide services for government entities are employees or independent contractors is a question of great importance for the workers and those who pay them.

Generally, when workers are employees, the government entity that employs them must withhold and pay employment taxes. When a worker is an independent contractor, the government entity has information reporting responsibilities, but does not have to withhold and pay employment taxes.

Under Federal law, the common-law rule is used to determine whether a worker is an employee of the service recipient (i.e., a government entity).

If the government entity has the **right** to direct and control the worker as to the manner and means of the worker's job performance, the worker is an employee for Federal tax purposes.

The government entity does not have to actually direct or control the way the work is done—as long as it has the right to do so. While the government entity also has some, though less, control over an independent contractor, the difference between an employee and an independent contractor lies in the degree of control.

If an employee is classified as an independent contractor and no reasonable basis for having done so is found, the township may be held liable for employment taxes for that worker.

See IRS Publication 15-A, *Employer's Supplemental Tax Guide* and Publication 963, *Federal-State Reference Guide* for more detailed information on determining whether a worker is an employee or independent contractor. These publications can be ordered by calling 1-800-829-3676 or viewed/downloaded from the IRS web site at www.irs.gov.

A township may have elected and appointed officials as well as workers who are hired or contracted for their services.

Elected and most appointed officials are defined by Federal statute as employees of the public entities they serve, i.e. mayors, members of the legislature, county commissioners, city council members, and board or commission members.

A public official has authority to exercise the power of the government and does so as an agent and employee of the government. **Thus, the Supreme Court has held that public officials are employees.**

A public official performs a governmental duty exercised pursuant to a public law. A public office is a position created by law, holding a delegation of a portion of the

sovereign powers of government to be exercised for the benefit of the public.

State statutes always specify the duties of a public office and generally establish the officer's superiors and subordinates, if any. They establish an official's term of office, sometimes the compensation.

State statutes may also require that a public official take an oath of office, and they often establish general and specific penalties for dereliction of duty.

Elected officials are responsible to the public, which has the power not to reelect them. Elected officials may also be subject to recall.

As employees, mandatory social security and Medicare applies to elected and most appointed township officials, as well as to those employees hired by the township, unless they are covered under a Section 218 Agreement or are a qualified participant in a public retirement system.

A Section 218 Agreement is a voluntary agreement the township has (through the state) with the Social Security Administration to provide social security and/or Medicare coverage

to these employees.

For more information on Section 218 Agreements or whether to withhold social security and Medicare taxes if your township has a public retirements system, see IRS Publication 963 or contact IRS FSLG Specialists, Rhonda Kingsley at 701-239-5400, ext. 261 (e-mail rhonda.g.kingsley@irs.gov) or Allyn Klamann at 701-227-0133 (e-mail allyn.r.klamann@irs.gov).

The following list in the box below provides a brief summary of basic Federal employment tax responsibilities. If any date shown below falls on a Saturday, Sunday, or Federal holiday, use the next business day.

Because the individual circumstances for each township can vary greatly, their responsibilities for withholding, depositing, and reporting employment taxes can differ. Each item in this list is discussed in more detail in Publication 15, *Circular E, Employer's Tax Guide* and in Publication 963, *Federal-State Reference Guide*.

NEW EMPLOYEES (Elected and most appointed township officials as well as hired employees):

- Verify work eligibility of employees (Form I-9, *Employment Eligibility Verification*). Available from U.S. Citizenship and Immigration Services by calling 1-800-870-3676 or at www.uscis.gov.
- Record employee's name and SSN from social security card.
- Ask employee for Form W-4, *Employee's Withholding Allowance Certificate*
- Provide employee Form W-5, *Earned Income Credit Advance Payment Certificate* (if applicable).

EACH PAYDAY:

- Withhold Federal income tax based on each employee's Form W-4.
- Withhold employee's share of social security and Medicare taxes, as applicable.
- Include advance earned income credit payment in paycheck if employee requested it on Form W-5.
- Deposit Requirements: You may pay the income, social security, and Medicare taxes with Form 941 if your total tax liability for the quarter is less than \$2,500 and the taxes are paid in full with a timely filed return. If your total tax liability for the quarter is \$2,500 or more, see Publication 15, *Circular E* for deposit requirements.

QUARTERLY (By April 30, July 31, October 31, and January 31):

- File Form 941, *Employer's Quarterly Federal Tax Return*

ANNUALLY

Employees:

- Before *December 1* - Remind employees to submit a new Form W-4 if they need to change their withholding.
- Form W-5 expires on *December 31*. Eligible employees who want to receive advance payments of the earned income credit in the next year must give you a new Form W-5.
- Reconcile amounts on Forms 941 with Forms W-2 and W-3.
- By *January 31* - Furnish each employee Copies B, C, and 2 of Form W-2.
- By *February 15* - Ask for a new Form W-4 from employees claiming exemption from income tax withholding.
- File Copy A of Forms W-2 and the transmittal Form W-3 with the SSA by *February 28* if filing paper forms. By *February 28* with Form 6559 if filing by magnetic media. By *March 31* if filing electronically.

INDEPENDENT CONTRACTORS:

- By *January 31*: Furnish each recipient a Form 1099 (such as Form 1099-MISC). Form W-9 may be used to secure the vendor's Taxpayer Identification Number (SSN or EIN).
- By *January 31*: File Form 945 for any nonpayroll income tax withholding, such as backup withholding. See the Instructions for Form 945 for details on depositing nonpayroll income tax withholding.
- File Copy A of Forms 1099 with the transmittal Form 1096 with the IRS by *February 28* if filing paper forms. By *February 28* with Form 4804 if filing by magnetic media. By *March 31* if filing electronically.