

Governmental Entity Federal Employment Tax Responsibilities

Are you aware that water districts are government entities? They are! Water districts in Kansas are political subdivisions of the State of Kansas. All employers, both government entities and private entities, are required to comply with all Federal tax laws to which they are subject.

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 must withhold and pay employment taxes. Employment taxes may consist of federal income tax, social security tax and Medicare tax. State and local governments generally pay the FICA tax on employees covered under Section 218 Agreements and on employees not covered by a public retirement system, and generally pays the Medicare portion on all other employees hired after March 31, 1986. State and local governments do not pay taxes under the Federal Unemployment Tax Act (FUTA) but state unemployment taxes may apply.

When workers are independent contractors, the governmental entity may have information-reporting and backup withholding responsibilities, but is not required to withhold and pay employment taxes on behalf of the worker.

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The common-law standard for determining whether a worker is an employee is whether the government entity has the right to direct and control the worker as to the manner and means of the worker's job performance. If the government entity has the right to do so, it is not necessary that it actually direct and control the manner in which the services are performed for the worker to be an employee.

A governmental entity 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 service, i.e. mayors, 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. The U.S. Supreme Court has held on this basis 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 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 and, 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 re-elect them. Elected officials may also be subject to recall by the public or a superior official.

As employees, mandatory Social Security and Medicare applies to

elected and most appointed government officials, as well as to those employees hired by the governmental entity, 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 government entity has (through the state) with the Social Security Administration to provide social security and/or Medicare coverage to these employees.

Employers who misclassify employees as independent contractors may be held liable for back taxes, penalties and interest. See IRS Publication 1779, Independent

Contractor or Employee, Publication 15-A, Employer's Supplemental Tax Guide and Publication 963, Federal-State Reference Guide for more detailed information on the facts and circumstances to consider in 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.

Also, a government entity may have information return reporting requirements. Under the Internal Revenue Code, a governmental entity is a "trade or business" for tax

The issue of employment tax responsibilities by rural water district will be presented at sessions during the 2010 KRWA conference.



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purposes. A trade or business, including a governmental entity, must file an information return for each calendar year with respect to payments made during the calendar year in the course of its trade or business.

A governmental entity should file Form 1099-MISC, Miscellaneous Income, for each person, who is not your employee, to whom you have paid at least \$600 for rents, services (including parts and materials) or other income payments. For more information, see Instructions for 1099-MISC. at www.irs.gov or contact Specialists: Gary Decker at 316-352-7475 or Allison Jones at 316-352-7443.

The information in the sidebar at right 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 governmental entity 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. For more information, see Web site <http://tege.web.irs.gov>.

Note: The mission of the Office of Federal, State and Local Governments is to ensure compliance by federal, state, and local governmental entities with federal employment and other tax laws through review as well as educational programs.

NEW EMPLOYEES

(Elected and most appointed government 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 withheld taxes, if required. See Publication 15, *Circular E*, for the deposit rules. Note: You are not required to deposit employment taxes if your total tax liability for the quarter is less than \$2,500. Form 944 filers generally do not need to make any deposits.

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

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

ANNUALLY (By January 31 of the following year)

- File Form 944, *Employer's Annual Federal Tax Return*, if you have been previously notified by IRS to file Form 944. If you receive written notification that you no longer qualify for the Form 944 program, you must file Form 941 instead of Form 944.

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 prior to this date.
- Reconcile amounts on Forms 941 or Form 944 with Forms W-2 and W-3 by *January 31*.
- 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 *March 31* if filing electronically

INDEPENDENT CONTRACTORS

- Upon initial contract, secure the vendors Taxpayer Identification Number (SSN or EIN), using Form W-9, *Request for Taxpayer Identification Number and Certification*, or an allowable substitute form. Failure to secure this information, if required, may subject the government entity to backup withholding tax. See *General Instructions for Forms 1099, 1098, 3921, 3922, 5498, and W-2G* for additional information related to Form W-9 and backup withholding tax.
- By *January 31*: Furnish each recipient a Form 1099 (such as Form 1099-MISC).
- By *January 31*: File Form 945, *Annual Return of Withheld Federal Income Tax*, 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 *March 31* if filing electronically.