



Tax Exempt & Government Entities

TEGE/EO/FSL

CURRENT EXAM ISSUES

 **IRS CONTACT INFORMATION**

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A Note Before We Begin...

- This presentation is designed to provide information – not a specific determination for your situation
- Worker classification determinations are made on a case by case basis, depending on the specific facts and circumstances



CURRENT/COMMON ISSUES

- Workers who receive both forms W-2 and 1099 MISC in the same tax year
- Worker Classification – employee or independent contractor
- CP2100 Notices/Backup Withholding Tax
- Taxable Fringe Benefits



W-2 & 1099 MISC IN SAME YEAR

- Comparison is performed by the IRS Service Center
- Automatically provided to field exam
- Separation of Duties?
- Additional taxable wages?
- Separate trade or business?



Worker Classification

Workers may be:

- Independent Contractors
- Employees
- How do you know

Resources

- [Pub 1779](#)
- www.irs.gov



Generally, an independent contractor is an individual who performs services for an entity where the entity controls only the result of the work.



Employee

Considerations:

- Common Law Rules
- Specific Federal Tax Statutes
- Section 218 Agreement

Resources:

[Pub 963](#)

www.ncsssa.org/stateadminmenu.html



Public Officials

- Mayor
- Legislator or elected representative
- County commissioner
- Judge/justice of the peace
- County or city attorney, marshal, sheriff, constable
- Registrar of deeds
- Tax collector or assessor
- Road commissioner
- Board members



Common Law Employee

An employer-employee relationship exists when the person for whom services are performed has the right to control and direct the individual who performs the services, not only as to the result, but also as to the details and means.

- Treas. Reg. 31.3121(d)-1(c)(1)



Employee vs. Independent Contractor

Categories of Evidence:

- Behavioral control
- Financial control
- Relationship of the parties



Behavioral Control

- Type of instruction given
- Degree of instruction
- Evaluation system
- Training provided by the business



Behavioral Control

The key fact to consider is whether the entity retains the **RIGHT** to control the worker regardless of whether the entity actually exercises that right.



Financial Control

- Significant investment?
- Unreimbursed expenses?
- Opportunity for profit or loss?
- Services available to the market?
- Method of payment?



Relationship of the Parties

- Is there a written contract?
- Are employee-type benefits provided?
- Permanency of the relationship?
- Are services provided a key activity of the business?



What if I'm Still Not Sure?

File Form SS-8 with IRS

Resource:

- [Form SS-8](#)

Form SS-8 (Rev. May 2014)		Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding		OMB No. 1545-0004
Department of the Treasury Internal Revenue Service		▶ Information about Form SS-8 and its separate instructions is at www.irs.gov/formss8 .		For IRS Use Only: Case Number: Earliest Receipt Date:
Name of firm (or person) for whom the worker performed services		Worker's name		
Firm's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		Worker's mailing address (include street address, apt. or suite no., city, state, and ZIP code)		
Trade name	Firm's email address	Worker's daytime telephone number	Worker's email address	
Firm's fax number	Firm's website	Worker's alternate telephone number	Worker's fax number	
Firm's telephone number (include area code)	Firm's employer identification number	Worker's social security number	Worker's employer identification number (if any)	

Note. If the worker is paid for these services by a firm other than the one listed on this form, enter the name, address, and employer identification number of the payer. ▶ _____

Disclosure of Information

The information provided on Form SS-8 may be disclosed to the firm, worker, or payer named above to assist the IRS in the determination process. For example, if you are a worker, we may disclose the information you provide on Form SS-8 to the firm or payer named above. The information can only be disclosed to assist with the determination process. If you provide incomplete information, we may not be able to process your request. See *Privacy Act and Paperwork Reduction Act Notice* in the separate instructions for more information. **If you do not want this information disclosed to other parties, do not file Form SS-8.**

Parts I-V. All filers of Form SS-8 must complete all questions in Parts I-IV. Part V must be completed if the worker provides a service directly to customers or is a salesperson. If you cannot answer a question, enter "Unknown" or "Does not apply." If you need more space for a question, attach another sheet with the part and question number clearly identified. Write your firm's name (or worker's name) and employer identification number (or social security number) at the top of each additional sheet attached to this form.

Part I General Information

- This form is being completed by: Firm Worker; for services performed _____ (beginning date) to _____ (ending date).
- Explain your reason(s) for filing this form (for example, you received a bill from the IRS, you believe you erroneously received a Form 1099 or Form W-2, you are unable to get workers' compensation benefits, or you were audited or are being audited by the IRS). _____
- Total number of workers who performed or are performing the same or similar services: _____
- How did the worker obtain the job? Application Bid Employment Agency Other (specify) _____
- Attach copies of all supporting documentation (for example, contracts, invoices, memos, Forms W-2 or Forms 1099-MISC issued or received, IRS closing agreements or IRS rulings). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ _____. If both Form W-2 and Form 1099-MISC were issued or received, explain why. _____
- Describe the firm's business. _____

For Privacy Act and Paperwork Reduction Act Notice, see the separate instructions. Cat. No. 16106T Form **SS-8** (Rev. 5-2014)



- CP2100 Notice Received from SVC
- Invalid, unassigned, or mismatched TIN?
- Invalid TIN – backup withhold
- Mismatch TIN – most common cause
- B Notice issued to payee/vendor?
- Numerous years for a payee/vendor?



CP2100 NOTICES/BACKUP W/H

- Suggestions – how to reduce errors
- Issue forms 1099 MISC only when required by tax law
- \$600 or more paid to vendor/payee
- Corporate exemption (however, must issue to medical and attorneys)
- Preparation errors – sole proprietors
- If no payment, then no backup withholding



Forms and Filing Requirements:

- Secure Form W-9 *before* paying the vendor
- Secure complete information on W-9 to properly prepare form 1099 MISC
- File Forms 1099-MISC and 1096
- File Form 945 for Backup Withholding



TAXABLE FRINGE BENEFITS

- The term “wages” means all compensation for employment unless the law grants a specific exception.
- Wages may be paid in cash, or in other forms.
- Noncash wages are measured by their fair market value.
- Subject to income, FICA, and Medicare tax withholding



TAXABLE FRINGE BENEFITS

- Cash and cash equivalents (gift cards)
- Gifts, prizes, and awards
- Day meals with no overnight travel
- Privileges in return for services
- Non-accountable reimbursements (car allowances, clothing allowances)
- Personal use of take home vehicles
- IRS Publication 15-B



CONCLUSION/QUESTIONS

- www.irs.gov
- Publications 15 and 15-B
- Publication 5137, Taxable Fringe Benefit Guide
- Agent contact information