



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Consolidated Public Water Supply District 1

Person to Contact: Dena Jones
Telephone Number: (816) 966-2346
Employee ID # 0244189
Tax Period(s) Ended: 12/31/2009
Date: 02/28/12

Dear Ms. [REDACTED]

Thank you for your cooperation in responding to our questions during our recent compliance check. It has been determined that an employment tax examination will not be conducted at this time, however, you should address the following areas of concern:

Classification of Elected and Appointed Officials

Government Officials as Employees

Generally, any individual who serves as a public officer is an employee or the government for whom he or she serves. Therefore, the government entity is responsible for withholding and paying Federal income tax, social security and Medicare taxes, and issues a Form W-2, Wage and Tax Statement, to the public official.

Public Officials and Public Officers

Although there is no precise definition for the term "public official" or "public officer," the courts have generally held that anyone who exercises significant authority pursuant to public laws is a public officer. This includes any official who administers or enforces public laws, whether the individual is elected by the public or appointed to an office.

Generally, if there is any provision in a public law which authorizes the employment of the individual, and the individual is hired or elected under this authority, the individual is considered an employee of the State or political subdivision to which the provision applies.

The following facts indicate that an office is a "public office":

- The office was created by the constitution or through legislation, or by a municipality or other body with authority conferred by the legislature.

02-29-12

cc: Rick
Julie
Perry

- The office was delegated a portion of the powers of government body.
- The powers conferred and the duties to be discharged are defined either directly or indirectly law or through legislative authority.
- The duties are performed independently and without control of a superior power other than the law.
- The office has some permanency and continuity, and the officer takes an official oath.

Examples of public officers are: the president and the vice president; a governor or mayor; the secretary of state; a member of a legislative body, such as a state legislature, county commission, city council, school board, utility or hospital district; a judge, a justice of the peace, a county or city attorney, a marshal, a sheriff, a constable and a registrar of deeds; tax collectors and assessors; and members of advisory boards and committees.

If there is not any authority in a public law to hire or elect someone, a determination must be made using common-law rules.

Common-Law Rules

In applying the common-law rules, the IRS considers whether the recipient of the services, in this case a government body, has behavioral and financial control over the worker and evaluates the type of relationship between the parties.

Behavioral controls are evidenced by facts, which indicate whether the service recipient has a right to direct or control how the worker performs the tasks for which he or she is hired. Facts, which illustrate the right to control how a worker performs a task, include the provision of training or instruction.

Financial controls are evidenced by facts that indicate whether the service recipient has a right to direct or control the financial aspects of the worker's activities. These include whether the individual has a significant investment and unreimbursed expenses, makes services available to the relevant market, and has an opportunity for profit or loss.

A type of relationship determination is evidenced by facts that indicate that whether the parties intended there to be an employee relationship. These include a written contract that describes the relationship the parties intended to create, whether the individual is provided with employee-type benefits, and the permanency of the relationship.

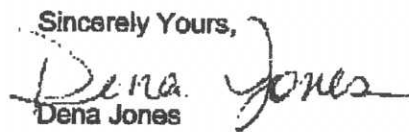
Exception for Fee-Based Public Officials

When a public office is compensated solely on a fee basis, then the person who serves in that capacity is considered to operate a trade or business rather than be considered an employee. This exception only applies when the fees are received directly from the public rather than from the government. For example, a building inspector who is compensated solely from fees paid directly to him or her by clients is considered to operate a trade or business and is not treated as an employee of the government.

Conclusion: For the tax year 2012, the Water District needs to start treating their elected board members as employees.

Some of the documents/forms referenced in this letter were among those provided to you during our compliance visit. They are also available on the IRS website at "www.irs.gov." If you have any questions regarding this letter or other Federal Employment Tax matters, please don't hesitate to call me at (816) 966-2346.

Sincerely Yours,


Dena Jones
Government Entities Specialist