



STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

MAY - 1 2006

COMPTROLLER'S MEMORANDUM NO. 2006-10

TO: Heads of Departments

ATTN: Personnel and Fiscal Offices

SUBJECT: Determining Status of Individuals Hired to Perform Services for
Departments and Agencies

Effective immediately, the following three memorandums titled, "Determining Employer-Employee Relationship" are rescinded:

Comptroller Memorandum No. 1989-7 dated February 22, 1989,
Comptroller Memorandum No. 1989-22 dated December 6, 1989, and
Comptroller Memorandum No. 1990-4 dated March 8, 1990

This memorandum incorporates the revised Internal Revenue Service (IRS) guidelines that are to be used to determine whether an individual who is hired to provide services as an "agent", a "consultant", a "firm" or an "independent contractor", should be treated as a vendor or a vendor in an employer-employee relationship ("employee"). To facilitate this determination, program administrators should complete and sign State Accounting Form D-40, EMPLOYEE/EMPLOYER RELATIONSHIP DETERMINATION. If it is determined that the individual should be treated as an "employee", the individual must be paid through the payroll system to ensure that appropriate taxes are withheld. To place the individual on payroll, State Accounting Form D-41, AUTHORIZATION TO PAY INDIVIDUAL (NON-EMPLOYEE), should be completed to authorize and pay the "employee". This form replaces State DPS Form 5, Notification of Personnel Action, and should be submitted to your departmental fiscal office. The individual's Federal (W-4) and State (HW-4) tax withholding forms and the "Salary Assignment/Cancellation" form (SAFORM D-60) should also be attached to the authorization to pay form.

Departments are reminded that all factors must be considered in the context of the nature of the work to be performed, when completing State Accounting Form D-40, EMPLOYEE/EMPLOYER RELATIONSHIP DETERMINATION. Departments should seek legal advice from their deputy attorney general in all cases where determination of the individual's status is questionable.

Departments must inform any individual placed on the State payroll system that the individual must be treated as an "employee" for federal and state employment tax requirements only and that no additional benefits result from being placed on the State's payroll system.

Please insure compliance with the requirements of this Memorandum when considering any new, renewed, extended, or otherwise amended contracts with individuals. If you have any questions, please call Wayne Horie, Accounting Division Chief, at 586-0600 or Sheila Walters, Pre-Audit Branch Chief, at 586-0650.


RUSS K. SAITO
State Comptroller

Attachments

- 1) Employee/Employer Relationship Determination, SAFORM D-40, Dated 5/1/06
- 2) Authorization to Pay Individual (Non-Employee), SAFORM D-41, Dated 5/1/06

STATE OF HAWAII EMPLOYEE/EMPLOYER RELATIONSHIP DETERMINATION

Name: _____

Period of Service: _____

Type of Service: _____

Instructions:

All marked spaces must be completed. (Incomplete forms will be returned.)

All forms must be signed and dated by the responsible State employee acquiring the services.

YES NO N/A

Behavioral Control

Would the department control or direct the individual providing services as to:

- | | | | |
|---|--------------------------|--------------------------|--------------------------|
| 1. hours, location, and method the individual is to do the work? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. provision of supplies, tools, or equipment to the individual? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. determination of whether or what workers the individual may hire to assist the individual? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. type of supplies and equipment to be used to do the work? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 5. type of work to be done by other specific individuals? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. order or sequence of procedures to follow? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 7. training provided by the State to do the work in a particular manner? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

Financial Control

To determine if the department will have right to direct or control the business related aspects of the individual's services to the department, would the individual:

- | | | | |
|--|--------------------------|--------------------------|--------------------------|
| 1. incur unreimbursed expenses in the performance of the work? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. have a significant financial investment in the performance of the work? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. be allowed to continue work outside of that contracted with the State? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 4. be in a position to make a profit or loss? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

STATE OF HAWAII
 EMPLOYEE/EMPLOYER RELATIONSHIP DETERMINATION

YES NO N/A

Relationship of the Parties

To show the intent of the parties concerning control:

- 1. Is there a written agreement between the parties describing the facts and circumstances under which the individual does the work? (Attach a copy of any proposed agreement between the individual and the State.)
- 2. Will the individual be provided any employee type benefits?
- 3. What is the length of the relationship?
 - a. long term, specify anticipated start/end date _____
 - b. temporary, specify anticipated start/end date _____
 - c. project, specify anticipated start/end date _____
 - d. indefinite, specify anticipated start date/projected end date _____
- 4. Are the services to be provided directly related to the department's regular business activities?

Conclusion:

When determining whether an individual is an employee or independent contractor for IRS purposes, examine the entire relationship between the individual and the procuring agency. Generally, an individual is considered to be an employee for IRS purposes if the procuring agency has the right to control and direct the individual, not only as to the result to be accomplished, but also as to the details and means by which that result is accomplished. Control is a matter of degree and it is important to examine these relationships on a case-by-case basis because a factor that may be critical in one instance may not be in another instance.

I have determined that the individual should be treated as an employee. (circle one) YES NO

My determination was based on (summarize reasons for your conclusion):

Signature Title Date

STATE OF HAWAII
AUTHORIZATION TO PAY INDIVIDUAL (NON-EMPLOYEE)

| | | | |
|------------|------------------------|---------|------------|
| DEPARTMENT | SUB-DIVISION OR SCHOOL | PAYROLL | |
| | | NO. | DIST. CODE |

| | |
|------------------------|---|
| SOCIAL SECURITY NUMBER | NAME (CAPS) LAST, FIRST, MI (not more than 22 characters) |
| ADDRESS | NUMBER AND STREET |
| | CITY, STATE, ZIP CODE |

| | | | | | |
|--|----------------|-----------------|-------|---|------|
| MARITAL STATUS | TAX EXEMPTIONS | RETIREMENT CODE | | FICA code: E for State Retirees or S for Non-Retirees | |
| <input type="checkbox"/> SINGLE <input type="checkbox"/> MARRIED | FEDERAL | STATE | GROUP | | FICA |
| | | | N | | |

EFFECTIVE DATE: _____ NOT TO EXCEED DATE: _____

PAY RATE: HOURLY _____ OR DAILY _____ OR MONTHLY _____

| UNIFORM ACCOUNTING CODE | | | | | | | | |
|-------------------------|----|-----|---|-----|--------|----------|-----|---------|
| F | YR | APP | D | S/D | OBJECT | FUNCTION | LOC | PROJECT |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |
| | | | | | | | | |

COMMENTS:

AUTHORIZED BY:

_____ DATE

_____ SIGNATURE

_____ PRINT NAME AND TITLE