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Effective immediately, the following three memorandums titled, "Determining Employer-Employee Relationship" are rescinded: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

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?
   YES □ NO □ N/A □

2. provision of supplies, tools, or equipment to the individual?
   YES □ NO □ N/A □

3. determination of whether or what workers the individual may hire to assist the individual?
   YES □ NO □ N/A □

4. type of supplies and equipment to be used to do the work?
   YES □ NO □ N/A □

5. type of work to be done by other specific individuals?
   YES □ NO □ N/A □

6. order or sequence of procedures to follow?
   YES □ NO □ N/A □

7. training provided by the State to do the work in a particular manner?
   YES □ NO □ N/A □

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?
   YES □ NO □ N/A □

2. have a significant financial investment in the performance of the work?
   YES □ NO □ N/A □

3. be allowed to continue work outside of that contracted with the State?
   YES □ NO □ N/A □

4. be in a position to make a profit or loss?
   YES □ NO □ N/A □
STATE OF HAWAII
EMPLOYEE/EMPLOYER RELATIONSHIP DETERMINATION

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.)
   - YES
   - NO
   - N/A

2. Will the individual be provided any employee type benefits?
   - YES
   - NO
   - N/A

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?
   - YES
   - NO
   - N/A

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

Page 2 of 2
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

□ SINGLE □ MARRIED

TAX EXEMPTIONS

FEDERAL STATE

RETIREMENT CODE

GROUP FICA

FICA code: E for State Retirees or S for Non-Retirees

EFFECTIVE DATE: ___________________________ NOT TO EXCEED DATE: ___________________________

PAY RATE: HOURLY __________ OR DAILY __________ OR MONTHLY __________

UNIFORM ACCOUNTING CODE

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COMMENTS:

AUTHORIZED BY:

__________________________ DATE ____________________________ SIGNATURE ____________________________

PRINT NAME AND TITLE ____________________________

STATE ACCOUNTING FORM D-41
MAY 1, 2006