

## **FSLG Newsletter – Winter Edition**

### **Table of Contents**

Independent Contractor or Employee?  
Who is an Employee?  
Not Sure Whether Someone is Your Employee?  
Federal, State and Local Government Contacts  
Form 1099-MISC: Reporting Payments to Independent Contractors  
Revised 2002 1098-T, Tuition Payments Statement  
Tax Exempt Bonds

### **Contributors**

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Allen Jones  
Stewart Rouleau  
Norma Steele  
Wanda Valentine  
Hans Venable

### **Independent Contractor or Employee?**

By Allen Jones, FSLG Director

With increasing government budget deficits and outsourcing of non-core operations, when do you know whether you can either re-hire your employees or hire outside contractors to keep up with your responsibilities and be in compliance with employment tax laws? This is an issue that all levels of government are struggling with. FSLG has two national programs to address employee and independent contractor issues, the Wage Reporting Compliance Program and the Information Return Reporting Compliance Program.

The Wage Reporting Compliance Program consists of delivery of educational information as well as enforcement through audits. To deliver the educational information, we participate in conferences and seminars as well as assisting you in resolving individual reporting or payment problems you may have. This program specifically addresses the worker classification issue by providing you information to help you make critical decisions for your agency or department. If you are uncertain of the relationship with your contractors, we can assist you in determining the status of the relationship.

On the other hand, if you merely want to ensure that you are properly reporting and filing payments to independent contractors, the Information Return Reporting Compliance Program is for you. It is also a comprehensive program that includes both education and enforcement components to increase voluntary

compliance. If you have outside contractors providing services to your agency or department, we can provide you the necessary information to ensure that your reporting requirements are met.

We help make it easier for you to understand and comply with our very complex tax laws. Please contact your local FSLG office or visit our web site at [www.irs.gov/govts](http://www.irs.gov/govts).

## **Who is an Employee?**

By Stewart Rouleau, FSLG Program Manager

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 that employs them must withhold and pay Federal income tax, social security and Medicare taxes. They may also be liable for withholding and paying state income and unemployment taxes. For workers who are independent contractors, the governmental entity has information-reporting responsibilities, but does not have to withhold and pay employment taxes. These workers are generally responsible for reporting and paying income and self-employment tax themselves.

### **Common-Law Standard**

Under Federal law, workers are covered by a common-law standard that determines whether they are employees. Under this standard, if the paying entity has the right to control both the means and the results of the work, these workers are employees for Federal tax purposes. A large body of case law has refined this standard over the years.

Whether there is sufficient control to meet this standard depends on all the facts and circumstances. These facts fall into three main categories:

***Behavioral Control*** – Facts indicated by questions such as:

- Does the payer provide training or instructions?
- Does the worker carry government identification?
- Does the worker receive an evaluation of performance?

***Financial Control*** – Facts indicated by questions such as:

- Does the worker have a financial investment in the operation?
- Does the worker offer services to the general public?
- Does the worker have unreimbursed expenses?

***Relationship of the Parties*** – Facts indicated by questions such as:

- Can the worker be terminated or quit at any time?
- Does the worker receive benefits?
- Are the services performed a key aspect of the regular business activity?

No fact by itself is decisive, and all facts must be considered in making a determination. For a more detailed discussion of the common law tests, see IRS Publications 15-A, *Employer's Supplemental Tax Guide*, and Publication 963, *Federal-State Reference Guide*.

## **Employment Status of Government Workers**

### **Section 218 Agreements**

Workers who are covered by a Section 218 Agreement between the State Social Security Administrator and the Social Security Administration are by definition employees. They are subject to all employment taxes and cannot be independent contractors.

### **Appointed or Elected Public Officials**

A public official has authority to exercise the power of the government and does so as an agent and employee of the government. The Regulations provide that certain appointed and elected officials are public officials, including a governor, a mayor, a county commissioner, a judge, a sheriff, a county or city attorney, a marshal, a sheriff, a constable, or a registrar of deeds. In general, elected officials, are employees. Appointed officials may be employees or contractors, depending on the level of independence provided for the position. In these cases, their work is not directly controlled by other officials or a governing body and they are generally compensated based on output of work. Examples may include hearing officers and property tax assessors.

The courts have generally established that officers with responsibility for enforcing laws directly represent government authority and are therefore employees of those governments.

In cases where it is questionable whether a public worker is an employee, state statutes may be helpful. While they cannot supersede the standards established by Federal law, these statutes frequently specify the duties and degree of control in public positions. Generally, the duties and reporting responsibilities are specified, and this is usually sufficient to indicate that the worker is an employee.

### **Fee-Based Public Officials**

An exception to the rule concerning public officials is provided for fee-based officials, who may not be employees if they receive substantially all of their

income from fees paid to them directly by the public. These fees are considered self-employment income rather than wages and are subject to self-employment tax.

Misclassification of workers can have costly consequences for government entities. If you have questions, please contact your FSLG Specialist.

## **Not Sure Whether Someone is Your Employee? Submit Form SS-8 for IRS Help**

By Hans Venable, FSLG Program Analyst

Any payer, including a government entity, and any worker can submit a completed Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, to request a determination from the IRS of a worker's status (employee or independent contractor) for purposes of Federal employment taxes and income tax withholding.

Form SS-8 asks questions about the work relationship between the firm and the worker. These questions relate to the common law standards. There is no single decisive fact when it comes to the common law standards. Each of the various elements of control must be carefully evaluated and weighed against the others in order to determine whether an individual is an employee or an independent contractor.

Because there are usually two (or more) parties who could be affected by a determination of worker status, the IRS attempts to get information from all parties involved by sending those parties blank Forms SS-8 for completion. The Forms SS-8 are then assigned to a specialist, located at one of two SS-8 Processing Centers, who will review the facts, apply the law, and render a decision. The IRS will generally issue a formal determination to the firm (any entity for which a worker provides services) or payer (if that is a different entity), and will send a copy to the worker.

The processing of a Form SS-8 may take as long as 120 days. This includes 30 to 45 days for all parties to submit a completed Form SS-8, up to 30 days for the case to be assigned to a specialist, 30 to 45 days for the specialist to review the case, clarify questions, secure additional information from each party if necessary, and issue the determination letter.

Gail Lontine, SS-8 Coordinator at the SS-8 Processing Center located in Newport, Vermont, says that although the form is long (3 pages and over 50

questions), it is important to answer each question with as much detail as possible. She says organizations and workers typically limit their responses to the amount of space that is provided on the form, which is generally not enough information to make the determination. She advises that providing additional specific information is helpful and will speed the processing.

Gail adds that some of her cases require extensive interaction with the involved parties to investigate the issues and reconcile differences between the differing views of the work relationship.

Gail says that government entities should be sure to provide the following when completing the Form SS-8:

- Copies of any written contracts and agreements about the job/position.
- Copies of statutes if the job/position in question was created by statute.
- Specific information about how the worker obtained the job; i.e., submitted an application, submitted a bid, assigned by an employment agency, appointed to the position, elected to the position, etc.
- Specific information about any company owned by the individual, which provides similar services to the general public.

In addition, she says that the organization needs to be sure to provide a good mailing address and a telephone number of an authorized government official so that issues can be clarified over the telephone.

If you are unsure whether a worker is your employee, or you and the worker do not agree on the interpretation of the facts, you may benefit from using Form SS-8. You can get it from IRS offices, download it from [www.irs.gov](http://www.irs.gov), or order by calling 1-800-829-3676.

## **Form 1099-MISC: Reporting Payments to Independent Contractors**

If a worker is not your employee, you are not liable for filing Form W-2 or any employment tax returns with respect to that payee. However, in most cases, you are required to issue and file information returns, such as **Form 1099-MISC**, Miscellaneous Income, for amounts you pay in nonemployee compensation.

### ***What types of payments require me to issue Form 1099-MISC?***

You must issue Form 1099-MISC for each person to whom you have paid, in the course of government business, at least \$600 as compensation for services. The form is also required to report rents, services, prizes and awards, medical and

health care payments, crop insurance proceeds, and attorney fees or gross proceeds to an attorney.

You should secure a taxpayer identification number from recipients prior to making any reportable payments. You can use Form W-9, *Request for Taxpayer Identification Number and Certification*, for this purpose.

Even if you are exempt recipient as a government or tax-exempt organization, you are subject to the filing requirements.

### ***Which payees should I issue Form 1099-MISC?***

You are required to report payments to individuals, partnerships, estates, trusts, legal and medical service providers.

### ***Are some payees exempt from the reporting requirements?***

As a government entity, you are not required to issue Form 1099-MISC for payments to:

- Tax-exempt organizations and governments
- Vendors for merchandise, freight, storage, and similar items (BUT payments to vendors for services are reportable)
- Corporations (other than attorney fees, medical and health care payments)
- Rent to real estate agents
- Recipients of scholarships
- Recipients of difficulty-of-care payments

### ***When is Form 1099-MISC due?***

Make the recipient copy available by January 31 after the year the payment is for. You must send copies to the IRS by February 28. However, if you file electronically, the due date is March 31. Penalties apply for late filing. See the **Instructions for Forms 1099, 1098, 5498, and W-2G** for full information on filing requirements and deadlines.

### ***What if Form 1099-MISC is not issued or is not correct?***

You may be subject to penalties for failure to file information returns, or to furnish them to the recipients. Government entities are not exempt from these penalties. In addition, if you fail to obtain a correct taxpayer identification number from the

recipient, you may also be subject to backup withholding requirements, which will require you to withhold 30% from future payments. If you fail to backup withhold when required, you may be liable for the tax. See the *Instructions for Forms 1099, 1098, 5498, and W-2G* for more information.

***Under what circumstances do I issue Form 1099-MISC to an employee?***

If someone meets the tests to be your employee, all compensation, benefits, reimbursements, etc., paid in the course of that work should be reported on Form W-2 and are subject to withholding. Only services as an independent contractor that are completely separate from employment could be reported on Form 1099-MISC to an individual to report compensation for services performed as an independent contractor. All compensation to a worker who is your employee under the common-law rules should be reported on Form W-2.

***Are there special requirements for Federal agencies?***

Generally, Federal agencies are subject to the same reporting requirements as state and local governments listed above. However, Federal agencies are required to issue Form 1099-MISC to corporations for payments for services over \$600. An additional reporting requirement applies to Federal agencies and quasi-Federal government agencies making payments of \$25,000 or more under a contract for services. These are reported on Form 8596, Information Return for Federal Contracts. This form includes more detailed instructions for its use.

For complete information, see the **Instructions for Form 1099-MISC**, available at [www.irs.gov](http://www.irs.gov).

## **Revised 2002 1098-T, Tuition Payments Statement**

By Wanda Valentine, FSLG Program Analyst

Public colleges and universities should be aware of the required reporting of tuition payments on Form 1098-T. Eligible educational institutions must file Form 1098-T for each student for whom the institution received payments for qualified tuition and related expenses or made reimbursements or refunds of such amounts.

An eligible educational institution is generally defined as any accredited public, nonprofit, or proprietary postsecondary institution that is eligible to participate in a student aid program administered by the Department of Education. This includes an educational institution that is a governmental unit, an agency or

instrumentality of a governmental unit. A designated officer or employee of the governmental entity must satisfy the reporting requirements of Form 1098-T.

The revised 2002 Form 1098-T includes new optional reporting procedures. An eligible educational institution may now choose to report payments received or amounts billed, and total amounts of scholarships and grants for qualified tuition and related expenses in designated boxes on the revised form. The revised form also allows an insurer to report reimbursements or refunds of qualified tuition and related expenses paid under an insurance arrangement. However, there is currently no requirement for the insurer to file this form.

The educational institution must use the same reporting method for all calendar years unless the IRS grants permission to change the reporting method. If the educational institution chooses not to follow the new optional reporting procedures, then the general reporting requirements apply.

There are several exceptions to this reporting requirement. An eligible educational institution does not have to file or furnish 1098-T if:

- The student is a nonresident alien, unless the student requests the form
- The student is enrolled in courses for which no academic credit is offered
- The student's qualified tuition and related expenses are entirely waived or paid entirely with scholarships; or
- The student's qualified tuition and related expenses are covered by a formal billing arrangement between the institution and the student's employer

For more information on these new optional reporting procedures and general reporting instructions and requirements, please refer to the 2002 *Instructions for Forms 1098-E and 1098-T*, which can be obtained from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-829-3676.

## **Volunteer Firefighters**

By Clark Fletcher and Gordon Parker, FSLG Specialists

Volunteer firefighters are employed in a variety of arrangements throughout the country and there is often confusion about their employment status and payments.

Volunteer firefighter units may be formed in a number of ways, including legislation, action of associations or organizations, or by community consent. Firefighter units may be staffed by volunteers or by part-time, intermittent, or seasonal workers. It is not uncommon for communities to employ a full-time fire chief to manage fire prevention and suppression through the use of true

volunteer firefighters. True volunteer firefighters do not receive, or have an expectation of receiving, compensation. State and local governments often employ the terms “volunteer firefighter” to denote firefighters who are not full-time firefighters and who are not eligible for participation in state retirement systems, such as the Law Enforcement Officers and Firefighter (LEOFF). This is the meaning of the term “volunteer firefighters” for purposes of this article.

Treasury Regulation Section 31.3121(d)-1(c)(2) indicates that, in general, the employment status of firefighters is determined by the common law elements of direction and control. The right to direct and control may reside with a fire chief, a fire association or organization, or a governmental entity. For those entities that employ full-time and volunteer firefighters, the right to direct and control extends to both classes of firefighters. This means that if the duties and responsibilities of both classes of firefighters are similar, their employment tax status should be the same. Employing entities often treat volunteer firefighters as independent contractors yet acknowledge that there are standards of control, imposed by statute or by contract, that limit a volunteer firefighter’s activities. Revenue Rulings 55-545 and 70-484, as well as Private Letter Rulings 9143026, 9202025, and 9312005, address the common-law employment relationship of volunteer firefighters.

Compensation, when paid to volunteer firefighters, may be described as “stipends” or “reimbursements”. Regardless of how it is described or determined, or how frequently it is paid, compensation is taxable if it is not paid under an accountable plan. (See Publication 15, *Employer’s Tax Guide*, for a discussion of accountable plans).

Most compensation is paid on either a points basis or per-call basis. Under a point basis system, a monetary value is assigned based upon attendance at meeting and/or training sessions, response to fire alarms, or whatever criteria that furthers the prevention and suppression of fires. At the end of the reporting period, the points are tallied, and each individual receives a pro-rata portion of a set sum of money based on his or her point total. **Under a per-call basis, the employing entity pays a flat rate (per event) to the individual for his/her response to a fire, for attendance at a training session, or for any other event that the employing entity deems to be of importance for fire suppression or prevention.**

Generally, if the workers are common-law employees, social security and Medicare taxes are applicable. Emergency volunteer firefighters who are employees of governmental entities may qualify for an exception from social security coverage through a statutory exclusion in IRC section 3121(b)(7)(F). **However, the emergency services exclusion cannot be invoked if there is a continuing employment relationship between the employing entity and volunteer firefighter.** Some states exclude volunteer firefighters from state unemployment taxes **and/or minimum wage provisions**, regardless of the employing entity’s tax

status. Federal unemployment (FUTA) taxes do not apply to government employers.

If a section 218 Agreement or modification is in effect, this establishes the status of the firefighters and no common-law determination need be made. Please contact your local FSLG Specialist for information on Section 218 coverage.

## **Tax Exempt Bonds**

By Joseph Grabowski, Senior TEB Analyst

Tax Exempt Bonds (TEB) offers specialized information and services to the municipal finance community. Municipal bonds provide tax-exempt financing for the furtherance of governmental and qualified purposes including the construction of airports, hospitals, recreational and cultural facilities, schools, water infrastructure, road improvements, as well as facilities and equipment used in providing police, fire and rescue services.

Tax Exempt Bonds activities are divided into two main categories: Field Operations, and Outreach, Planning and Review.

TEB Field Operations is responsible for identifying and correcting noncompliance with fairness and the highest level of integrity. Field Operations also assists in the delivery of outreach assistance to the municipal finance community as part of the TEB goal to help issuers understand the tax law to ensure up-front voluntary compliance.

TEB Outreach, Planning and Review (OPR) is primarily responsible for the development and coordination of both the Voluntary Closing Agreement Program and the Customer Education and Outreach Program. OPR has specially trained staff to develop educational materials on tax-exempt bond topics and to participate in conferences, seminars and workshops to share these materials and the latest tax law developments.

To learn more about the TEB programs available, visit the WEB site at [www.irs.gov/bonds](http://www.irs.gov/bonds) or contact Clifford Gannett, Manager of Tax Exempt Bonds Outreach Planning and Review at 202-283-9798.

## Independent Contractor or Employee?

By Allen Jones, FSLG Director

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Whether there is sufficient control to meet this standard depends on all the facts and circumstances. These facts fall into three main categories:

#### **Behavioral Control – Facts indicated by questions such as:**

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are generally compensated based on output of work. Examples may include hearing officers and property tax assessors.

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- Recipients of scholarships
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**Are there special requirements for Federal agencies?**

Generally, Federal agencies are subject to the same reporting requirements as state and local governments listed above. However, Federal agencies are required to issue Form 1099-MISC to corporations for payments for services over \$600. An additional reporting requirement applies to Federal agencies and quasi-Federal government agencies making payments of \$25,000 or more under a contract for services. These are reported on Form 8596, Information Return for Federal Contracts. This form includes more detailed instructions for its use.

For complete information, see the Instructions for Form 1099-MISC, available at [www.irs.gov](http://www.irs.gov).

**Revised 2002 1098-T, Tuition Payments Statement**  
By Wanda Valentine, FSLG Program Analyst

Public colleges and universities should be aware of the required reporting of tuition payments on Form 1098-T. Eligible educational institutions must file Form 1098-T for each student for whom the institution received payments for qualified tuition and related expenses or made reimbursements or refunds of such amounts.

An eligible educational institution is generally defined as any accredited public, nonprofit, or proprietary postsecondary institution that is eligible to participate in a student aid program administered by the Department of Education. This includes an educational institution that is a governmental unit, an agency or instrumentality of a governmental unit. A designated officer or employee of the governmental entity must satisfy the reporting requirements of Form 1098-T.

The revised 2002 Form 1098-T includes new optional reporting procedures. An eligible educational institution may now choose to report payments received or amounts billed, and total amounts of scholarships and grants for qualified tuition and related expenses in designated boxes on the revised form. The revised form also allows an insurer to report reimbursements or refunds of qualified tuition and related expenses paid under an insurance arrangement. However, there is currently no requirement for the insurer to file this form.

The educational institution must use the same reporting method for all calendar years unless the IRS grants permission to change the reporting method. If the educational institution chooses not to follow the new optional reporting procedures, then the general reporting requirements apply.

There are several exceptions to this reporting requirement. An eligible educational institution does not have to file or furnish 1098-T if:

- The student is a nonresident alien, unless the student requests the form
- The student is enrolled in courses for which no academic credit is offered
- The student's qualified tuition and related expenses are entirely waived or paid entirely with scholarships; or
- The student's qualified tuition and related expenses are covered by a formal billing arrangement between the institution and the student's employer

For more information on these new optional reporting procedures and general reporting instructions and requirements, please refer to the 2002 Instructions for Forms 1098-E and 1098-T, which can be obtained from the IRS website at [www.irs.gov](http://www.irs.gov) or by calling 1-800-829-3676.

#### Federal, State and Local Governments Contacts

State	Specialist	Telephone Number	Ext.
Alabama	Judy Nichols John Givens	(251) 340-1781 (251) 340-1761	
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Arkansas	Jan Germany	(501) 324-5328	253
Arizona	Kim Savage	(928) 214-3309	5
California	Gordon Parker Phyllis Garrett Fred Darbonnier	(909) 388-8161 (213) 576-3765 (916) 974-5614	
Colorado	Karen Porsch Chuck Sandoval	(719) 579-0839 (303) 446-1156	231

Connecticut	Phyllis Burnside	(401) 525-4205	
Delaware	Kevin Mackesey	(302) 856-3332	12
Florida	Sheree Cunningham Fernando Echevarria Paulette Leavins Mae Whitlow	(727) 570-5526 (954) 423-7406 (904) 220-6764 (407) 660-5822	440 293
Georgia	Denver Gates	(404) 338-8205	
Hawaii	Sue Ann Jansen	(503) 326-5057	
Idaho	Chris Casteel	(208) 334-1050	233
Illinois	Ted Knapp Joyce Reinsma Janie Smith	(618) 244-3453 (312) 566-3879 (630) 493-5148	
Indiana	Valerie Hardeman	(317) 226-5305	
Iowa	David Prebeck	(515) 573-4120	
Kansas	Gary Decker Allison Jones	(316) 352-7475 (316) 352-7443	
Kentucky	Ray McLennan	(270) 442-2607	127
Louisiana	Gloria Brooks Robert Lettow	(225) 389-0358 (318) 869-6312	119
Maine	Bob Westhoven	(207) 784-6988	
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Massachusetts	Mark A. Costa	(800) 651-4524	
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Minnesota	Pat Wesley	218) 720-5305	225
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Montana	Katherine Dees	(406) 761-1825	229
Nebraska	Thomas Goman	(402) 361-0202	
Nevada	Gordon Parker	(909) 388-8161	
New Hampshire	Bob Westhoven	(207) 784-6988	
New Jersey	Pat Regetz Jennifer Macht	(908) 301-2119 (732) 819-3760	322
New Mexico	Toni Romero-Ackerman	(505) 837-5541	
New York	Martin Boswell Ernest Child Henry Ng Fran Reina	(315) 448-0811 (585) 262-1902 (212) 719-6600 (315) 793-8171	110
North Carolina	Joe Fish	(336) 378-2966	
North Dakota	Al Klaman Rhonda Kingsley	(701) 227-0133 (701) 239- 5400	261
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South Dakota	Marlyce Luitjens	(605) 226-7216	231

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### Tax Exempt Bonds

By Joseph Grabowski, Senior TEB Analyst

Tax Exempt Bonds (TEB) offers specialized information and services to the municipal finance community. Municipal bonds provide tax-exempt financing for the furtherance of governmental and qualified purposes including the construction of airports, hospitals, recreational and cultural facilities, schools, water infrastructure, road improvements, as well as facilities and equipment used in providing police, fire and rescue services.

Tax Exempt Bonds activities are divided into two main categories: Field Operations, and Outreach, Planning and Review.

TEB Field Operations is responsible for identifying and correcting noncompliance with fairness and the highest level of integrity. Field Operations also assists in the delivery of outreach assistance to the municipal finance community as part of the TEB goal to help issuers understand the tax law to ensure up-front voluntary compliance.

TEB Outreach, Planning and Review (OPR) is primarily responsible for the development and coordination of both the Voluntary Closing Agreement Program and the Customer Education and Outreach Program. OPR has specially trained

staff to develop educational materials on tax-exempt bond topics and to participate in conferences, seminars and workshops to share these materials and the latest tax law developments.

To learn more about the TEB programs available, visit the WEB site at [www.irs.gov/bonds](http://www.irs.gov/bonds) or contact Clifford Gannett, Manager of Tax Exempt Bonds Outreach Planning and Review at 202-283-9798.