

## ***TEN MINUTES WITH THE IRS***

By Martin Boswell, FSLG Specialist

Have a question regarding a notice from the Internal Revenue Service? Wondering how to report a payment to a Canadian independent contractor? Are you unsure of the tax consequences of employees taking home their government vehicles? You may want to consider a call to your friendly neighborhood Federal, State and Local Government (FSLG) Specialist.

We would like to take this opportunity to tell you about our program. The Internal Revenue Service (IRS) recognizes that governmental entities are a unique form of employer with their own issues and concerns. Since 1997 the IRS has had a program to assist government employers with their employment tax requirements. In 2000 the Federal, State and Local Government group was established. Our mission is to provide Federal, state, local and quasi-governmental customers top quality service by helping them to understand and comply with the applicable tax laws and to protect the public interest by applying the tax laws with integrity and fairness to all.

FSLG is accomplishing this mission through a mixture of education and compliance tools. Over the past couple of years we have been involved with a variety of educational outreaches including setting up our own seminars, speaking at events like NYSGFOA training conferences and providing materials at trade-show booths. The seminars are tailored to address the issues that governmental entities encounter. At some point during the presentations we play “stump the IRS guy”. Generally, someone manages to come up with a question we have not thought about before, so the seminars are also a learning experience for us. In the event that you have not had an opportunity to attend an FSLG presentation, here are a few of the topics that come up:

**Section 218 coverage:** In New York State almost all governmental entities have a “218 agreement” and very few of them realize it. When the Social Security system was set up, governmental units were not allowed to participate. Over the years Congress changed the rules that allowed the states to set up agreements with the Social Security Administration to provide coverage to the state and local government employees. If you have any employees that you are not providing Social Security and Medicare coverage for, you should review the circumstances to ensure that you are correctly treating the employee’s wages.

**Form 1099:** We have been told more than once that governmental entities do not have to file Form 1099. That is not correct. If you are not filing any Forms 1099 you are probably mistaken. A payer is required to file Form 1099 for payments that total \$600 or more in a year to an unincorporated business or individual. There are also some types of businesses (for example health care providers and attorneys) that must be issued Forms 1099 even if they are incorporated. If you require your vendors to complete Form W-9, *Request for Taxpayer Identification Number and Certification* you will have all of the information needed to complete the 1099s. In general, an employee should not be getting a W-2 and a 1099. If you have that situation, you should take a look at it to ensure that the payments are being reported correctly.

**Employer provided vehicles:** Many government entities provide vehicles for their employees to use. If the employee is allowed to use the vehicle personally, there is probably a taxable fringe benefit to the employee. The value of that benefit should be added to the employee’s W-2 and the usual employment taxes should be withheld. Keep in mind that commuting (driving the vehicle from home to work and back again) is personal use. Consequently, if an employer allows an employee to take a vehicle home, it is likely a taxable event. There are several options for valuing the personal use of an employer’s vehicle. These are explained in Publication 15-B *Employer’s Tax Guide to Fringe Benefits*.

**Cash Allowances:** This is an area where we see many mistakes. At the beginning of the year / month employees are given a set amount of money to cover business expenses. These expenses are usually the purchase of work clothing, equipment or the use of an employee’s personal automobile. When the employer

does not obtain substantiation of how the money is actually spent, those cash allowances are always additional wages to the employee.

**Accountable plans:** The determining factor as to whether a payment to an employee is taxable often comes down to an accountable plan or lack of one. Accountable plans have three requirements:

1. There must be a business purpose for the expense.
2. The employee must provide substantiation of the expense to the employer.
3. If the employee has been given an advance on the expense, any overpayment is required to be reimbursed to the employer.

Cash reimbursements or allowances for expenses that do not meet the above listed requirements are reportable to the employees as additional wages.

**Meals and lodging:** In general, reimbursements for employee meal and lodging expenses must be related to overnight travel on behalf of the employer. We have seen government entities with policies that reimbursed employees for meals purchased 50 miles from their office or meals purchased outside of county boundaries. In both cases, these reimbursements would generally be additional wages to the employees if there is no overnight travel associated with the expense.

The above comments are provided to give some examples of issues we have observed in our reviews of governmental entities. The comments are not a complete analysis on the particular topic. Most of the regulations for employment taxes are fact-and-circumstance driven. In order to evaluate an employer's compliance with an area, all facets of the question must be considered. This is where your FSLG Specialist can assist you. The specialist will compile the information necessary to give you a complete answer. Listed below are the members of the FSLG group in New York State.

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