

NEW YORK STATE
OFFICE OF THE STATE COMPTROLLER

DIVISION OF AUDITS AND ACCOUNTS

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To : All State Departments and Agencies

Subject: Payment to Individuals

A recent audit by the U. S. Department of Health, Education and Welfare of the State's social security payments for its employees and the records of payments to individuals made by voucher and reported on annual information returns (Form 1099), requires the State to tighten its processing and reporting for individuals considered as employees under the Federal Social Security Act. As a result of the audit the State amended its social security reports and made retroactive contributions for both the employer's and the employees' shares to the social security system for amounts paid on vouchers when individuals were also on the State's payroll during the year.

Accordingly, amounts paid to an individual considered an employee of the State -- for example, extra service payments -- must be processed within the State's payroll system for social security tax and withholding tax reporting purposes. Each agency is responsible for determining whether payments to individuals through the voucher processing system truly meet the tests of "independent contractor" status. This is especially critical since the State is required to report all remuneration of its employees for social security coverage and withhold the proper income tax; this cannot be accomplished through the voucher payment system.

The "employer" is considered to be the State of New York and not each department, agency, the Legislature or Judiciary. If an individual is on any of these payrolls, contributions for social security must be made for all personal service performed for the State by eligible employees. Therefore, each agency must ascertain, prior to beginning payments to an individual, whether that individual is currently or has been on payrolls of another agency during the year to assure that payments to an "employee" are consistently treated.

If it is determined that the employer/employee relationship exists, after applying the common-law test and based on the actual facts of the situation, the designation or description of the relationship by the parties as anything other is immaterial. Thus, it may be of no consequence that the employee is designated as an "independent contractor" and a signed contract between the parties is executed.

To aid in determining the effective relationship for payroll reporting purposes, the following general description is provided.

An independent contractor is one who agrees to do a specific piece of work for a lump sum or its equivalent, who has control of himself and his helpers as to when, within a reasonable time, he shall begin and finish the work; as to the method, means or procedure of accomplishing it; and who is not subject to discharge because he does the work as to method and detail in one way rather than another. Often he furnishes his own tools and supplies.

An agency should apply the above criteria in the future when considering the use of the voucher payment process for making payments to individuals. Attention must be given to those situations where an individual could appear on both the State's payroll and vouchers for payment of services during a single year. The Federal audit and a computer run of payment files for the past year disclosed numerous situations where this occurred. While in some cases this condition may be appropriate and can be substantiated when called upon to do so, others are not, such as extra service payments or pre-appointment payments.

Responsibilities of Agencies

Each agency is responsible for determining whether payments to individuals through the voucher processing system clearly meet the tests of "independent contractor".

Each agency is responsible for developing adequate documentation to support the fact that a voucher payment to an individual meets the "independent contractor" test. The rationale justifying this determination must be submitted to this Department. If the actual facts of the situation establish that an employer/employee relationship exists, the individual will be treated as an employee even though the agency may have submitted a contract.

Each agency is responsible for establishing whether the individual to whom a voucher payment is planned is or has been on a payroll of the State at any time during the current calendar year.

If the services to be rendered by an independent contractor exceed \$1,000, a contract is to be entered into and submitted for review and approval.

Contracts may not be necessary in those cases where payment is based on a statewide approved fee schedule (i.e., Medical Fee Schedule). When a contract is not feasible or practical because of special circumstances, this should be discussed and cleared with this Department.

Questions concerning the voucher payment system should be directed to John Flynn, 518-474-5560.