



Social Security Coverage and Reporting ...leading the way

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Special Detail/Special Duty Of Deputy Sheriffs And Police Officers

It is a common practice for deputy sheriffs and police officers to work special events such as parades, ball games, community events, etc. The questions of how these officers are paid and by whom are an increasing concern due to taxable and liability issues. If an officer is in uniform, driving the government employee vehicle, wearing government issued gear, and has arresting capabilities, these are strong indications that the government employer is in control and any pay should be routed through the sheriff or police departments and the money added to payroll.

This advisement is not a legal opinion. However we offer this advice based on multi-faceted issues related to IRS common law employer rules, liability issues, and department of labor standards and laws.

There are two options as it concerns special duty:

1. If the vendor wants a uniformed law enforcement officer, the vendor contracts with the government entity and pays the government entity an agreed amount. The government entity will then pay the law enforcement officer through payroll and appropriate employment taxes withheld and reported on a W2.
2. The vendor contracts directly with the individual, but the individual can not be in a government uniform, government vehicle, use government equipment, or have government arresting powers. The vendor would then pay the officer directly.

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Some will ask why can't the officer stay in uniform, use the police cruiser, etc and get paid directly from the vendor? Below is the flow of logic why this can not be.

1. The deputy sheriff or the police officer must gain approval from the government agency to work the extra special detail or special duty in uniform or out of uniform to make sure there is no conflict of interest. The officer can not work the event without the express approval from the government agency. This is an element of control that points to the government agency as the employer.
2. By wearing the government issued uniform and equipment, driving the law enforcement vehicle, the law enforcement officer represents government authority to the public whether it is legally asserted or not. (If the individual were truly acting independently of the government entity, they would not have any ties to the local government office).
3. The government entity would more than likely have the authority to discipline an officer at a special detail for actions taken while in uniform. This is a characteristic of an employer/employee relationship.
4. If the law enforcement officer is in uniform working the special detail, more than likely the government entity would be responsible for any worker's compensation issue if the officer is injured while performing the special detail. Another factor in favor of an employer/employee relationship.
5. If a charge of police misconduct is made against the officer on special detail, more than likely the government entity will be seen as liable. A government entity may argue they are not liable, but the courts may not agree based on the points made in items 1 thru 4.

I have heard some offices argue that the law enforcement officer working special detail will end up going into overtime. If the officer is working more than 40 hours then there would be overtime. If an officer is in uniform and working he/she should be paid by the government employer and if overtime is warranted it needs to be paid directly through payroll or the government entity could be violating Department of Labor laws.

If your entity, the individual and/or vendor question the employer and employee relationship, there is a form that can be filled out, Form SS-8, which when submitted, will be reviewed by the IRS to make a final determination. You can go to the following link to find out more:

<http://www.irs.gov/pub/irs-pdf/fss8.pdf>

2010 Form W2 Addition

A requirement to show the employer-paid cost of health coverage will appear on Form W-2s for tax year 2010. Once the Social Security Administration informs us of the placement of this reporting on the 2010 Form W2s we will pass the information along through the newsletter.

1099 Reporting Expansion

The final language of the changes has been released about the 1099 Reporting expansion which eliminates the corporate exemptions and includes goods for Tax Year 2012. The wording is as follows:

SEC. 6006. EXPANSION OF INFORMATION REPORTING REQUIREMENTS.

(a) IN GENERAL.—Section 6041 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsections:

“(h) APPLICATION TO CORPORATIONS.—Notwithstanding any regulation prescribed by the Secretary before the date of the enactment of this subsection, for purposes of this section the term ‘person’ includes any corporation that is not an organization exempt from tax under section

501(a).

“(i) REGULATIONS.—The Secretary may prescribe such regulations and other guidance as may be appropriate or necessary to carry out the purposes of this section, including rules to prevent duplicative reporting of transactions.”.

(b) PAYMENTS FOR PROPERTY AND OTHER GROSS

PROCEEDS.—Subsection (a) of section 6041 of the Internal Revenue Code of 1986 is amended—

(1) by inserting “amounts in consideration for property,” after “wages,”,

(2) by inserting “gross proceeds,” after “emoluments, or other”, and

(3) by inserting “gross proceeds,” after “setting forth the amount of such”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made after December 31, 2011.

Stipends, Gift Cards and Gifts

A frequent question we get concerns the taxability of stipends, gift cards and gifts. Remember, all income is taxable unless it is specifically excluded by the Internal Revenue Code IRC § 61

A stipend is income that generally is not excluded. For example, a teacher is provided a stipend to encourage participation in a training event. This would be taxable income because there is nothing in the Internal Revenue Code that would exempt this as a taxable event. It is taxable income regardless of whether you call it a bonus, stipend, or educational incentive.

Likewise, gift cards have a taxable benefit if it holds an equivalent cash value. Cash equivalent means readily convertible to cash, such as a savings bond or gift certificate.

Regardless of the cost of an award or its FMV, the following awards are taxable as wages to an employee:

- Cash or cash equivalent awards, such as savings bonds or general merchandise gift certificates.
- Recognition awards, cash or non-cash, for job performance unless they are qualifying de minimis fringe benefits
- Awards for outstanding customer service, employee of the month, highest productivity
- Achievement awards, cash or non-cash, that do not meet the requirements for excludable treatment
- Awards for length of service or safety achievement that do not meet certain specific requirements and limitations.
- Non-cash prizes (unless de minimis) won by employees from random drawings at employer sponsored events. Reg. §1.274-2(c)(4)
[See http://www.irs.gov/pub/irs-tege/fringe_benefit_fslg.pdf, page 68]

For a more indepth discussion on taxable fringe benefits go to http://www.irs.gov/pub/irs-tege/fringe_benefit_fslg.pdf

Updated Tax Chart

We have updated our tax chart to reflect the updated information for 2010. You can view the updated chart at <http://finance.ky.gov/NR/rdonlyres/697AA60A-D321-49C7-BD2A-49BD927ABFD2/0/taxchart.pdf>

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