

Tax Practitioner Liaison Meeting

Oregon Department of Revenue – Fishbowl meeting room
Friday, August 24, 2007
9:00a.m. - 11:00 a.m.

MINUTES

Introductions

All

Ron asked each person to make an introduction.

Tax Services Update

Joan Linn (503) 945-8774

Due to recent media releases about the kicker rebate. Tax Services has started receiving many calls inquiring about when the kicker rebates will be sent out.

Kicker Update

Ron Wagner (503) 945-8644

The Office of Analysis has finished reconciling Oregon's books for the biennium. However, the kicker rebate percentage will not be certified until August 31, 2007. Note: The percentage has now been certified; the percentage is 18.6%. The legislature extended the timeframe DOR has to mail kicker rebates. DOR now has until December 15th. The legislature also modified the statute from to change the calculation amount to tax before credits instead of tax after credits.

Question: If a taxpayer filed a non-resident or a part year resident return are they entitled to a rebate?

Answer: Yes as long as there was tax paid before credits were calculated on the return they are entitled to a rebate check. These rebates will be issued the same time as resident rebate checks.

Question: What is the lowest dollar amount check DOR will release?

Answer: \$1.00 this amount also holds true for any check issued by DOR.

If an original return is not been filed with DOR soon, there is a possibility that the rebate check will be delayed.

Kicker information is posted to the DOR web site and will be update as new information is received. You will also find answers to common questions.

Processing Center Update

Sharon Johnston (503) 947-2267

There are 20,000 returns currently in the Suspense unit being manually processed. That number includes 10,000 amended returns and 5,000 current year returns. Suspense will change the work priority from 2006 original returns to 2006 amended returns. This is in effort to have the most accurate amount on the system for the kicker calculation.

2-D Barcode Update

Tom Boettger (503) 947-2174

2-D team has been working on the software developer handbook for the 2007-filing season.

Letters of intent letters have been received from; 2nd Story, Intuit, Lacerte, CCH, Jackson Hewitt, H&R Block, Taxworks, Orrtax, Petz, Online Tax Pro, STF Services and CS Professionals (which is

a combination of Thompson and Creative Solutions). The software development testing will start in Late November and run through December.

So far approximately 356,931 Personal Income Tax (PIT) and 11,159 Corporation returns have been processed with a barcode.

ELF Update

Mark Ruth (503) 945-8731

Over 940,000 E-filed returns have been received and processed so far. DOR is hoping to have a fairly large increase with the upcoming extension filing deadline.

Mark will provide statistics on how many Oregon only returns have processed for 2006 at the next meeting.

Working Family Child Care Credit (WFC)

Keith Shribbs (503) 947-2275

Keith announced that he will be transitioning out of the WFC team. This is so that he can conduct the new audit class training. Roberto Villanueva ((503) 947-2045) and Shannon Ball ((503) 945-8660) will be sharing the WFC responsibilities.

The legislature modified the definition (ORS 315.262) of who qualifies to claim WFC to add a person with a disability who is not working or attending school. The definition is different from the disabled person additional exemption credit allowed on the front of the return. There is a new form that is in the process of being created (WFC-DP) that will need to be filled out and attached to the back of the return each year that the disabled person claims the credit. If e-filed the WFC-DP will need to be faxed/mailed in separately. A doctor's signature is required on the new form. We will bring copies for the group at the September meeting.

DOR is looking into dedicating a fax and PO Box specific to WFC correspondence. Roberto and Shannon will keep the group updated on the status of this.

Withholding Program Update

Carol Williams (503) 945-8443

In preparation the annual mailings of form OTC (Oregon combined payroll tax coupon) and form OQ (Oregon Quarterly Tax Report), if you have clients that need to update their mailing address with DOR, have them do this soon.

Independent Contractors Training

Cathy Tavares (503) 945-8762

Cathy gave a presentation on Independent Contractors; it was a good discussion with a lot of questions. If you have a specific question that was not answered you can email your question to payroll.help.dor@state.or.us (*See attachment A*).

IRS Issues

Bob Finlan

There have been over 80 million returns filed with the IRS. Practitioner prepared returns make up 71% of returns filed and filing season isn't over yet!

IRS has many email forums to subscribe to with helpful information. If you would like a list of different topics to subscribe to; go to the IRS web site, in the search engine type "subscribe" this will bring up listings.

Bob distributed an *IRS Briefing Tip Sheet* to everyone. This handout includes information for ERO's and E-file mandates and also includes upcoming E-IRS seminars/Practitioner Liaison meeting sites. (*See attachment B*).

Update from OATC/OSTC & Open Forum

All

OATC- Back to Basic seminar is happening in different locations around the state. More information and location sites go to the OATC web site.

OSTC- The Oregon Society of Tax Consultants, INC 2007 Annual Convention registration form was distributed. Convention will be held in Grants Pass. *(See their website for further details)*

OSTC S. Shores Registration Form was also distributed. Fall Seminar will be held September 7, 2007 in North Bend. *(See their website for further details).*

The Southern Oregon chapter of the Oregon Society of Enrolled Agents will be hosting a fall seminar on “Tax Treatment of Awards and Settlements”. Registration flyers will be mailed mid-September. This seminar will be held at Seven Feathers in Canyonville Oregon. *(See their website for further details.)*

Next meeting: September 29, 2007, 9:00am to 11:00am, in the Fishbowl conference room located at the Oregon Department of Revenue.

Worker Classification: Employee or Independent Contractors

Why is it important to classify employees correctly?

One of the biggest tax issues for companies is determining whether workers are employees or independent contractors. Making the determination as to whether to classify a worker as an employee or an independent contractor can be confusing. However, misclassification can be costly to both the employer and the worker.

Simply choosing to issue an individual a 1099 or entering into a written contract with an individual to perform services does not automatically classify that individual as an independent contractor. Many companies believe they can choose whether to treat an individual as an independent contractor and have mistakenly treated employees as such. The issue usually comes to the forefront when the worker suddenly realizes that they are responsible for paying their own income taxes, or that wages have not been reported for Unemployment, Social Security or Medicare purposes

- Some examples of industries where misclassification of employees is quite common are consultants, sales people, computer programmers, medical personnel, the insurance industry, the beauty industry, and the construction industry. Even an individual homeowner, hiring someone to do remodeling work, can inadvertently become an employer if the person hired to do the work does not meet the legal definition of independent contractor.

For both state and federal purposes, the laws are very clear who can and cannot be treated as an independent contractor.

Why is it so important? 1099 or W2, what's the difference as long as the income is reported and taxes are paid?

Misclassification of an individual can have serious consequences for both the employer and employee:

For the employee:

- They are personally liable and responsible for all tax debts, including self-employment, transit taxes and Social Security taxes.
- They may be civilly responsible for any damage caused in performing the service and can be sued.
- They are not covered by unemployment insurance, workers' compensation benefits, or protected by Oregon's Wage Security laws, such as minimum wages, overtime pay and rest periods.
- They are not eligible for other employment benefits such as health insurance or retirement plans

For the employer:

If they hire someone that they believe is an independent contractor but later is determined to be a worker/employee, Oregon law allows, and often requires, state agencies to impose back taxes, penalties and interest on employers who have misclassified their employees.

Depending on the agency, this can be quite substantial and very costly. For Oregon, each agency has its own specific guidelines regarding back taxes, penalties and interest.

Basic Definitions:

A. Employee:

An individual who performs services for an employer who is subject to the employers control regarding what will be done and how it will be done.

B. Independent Contractor:

An individual who performs services for another but is not under the person's direct control. In other words, the business has the right to control and direct only the result of the services performed and not the means or methods of accomplishing that service.

- **So, if an individual is considered an independent contractor for federal purposes, are they also an independent contractor for Oregon? Isn't Oregon law the same as federal?**

NO. There are definitely differences between the IRS's definition of Independent Contractor and Oregon's definition. It is conceivable that an individual could be classified as an independent contractor for federal purposes and be classified as an employee for state.

IRS Definition:

There are generally three factors to consider in determining whether a worker is an employee or an independent contractor for federal purposes.

1. Behavioral Control
2. Financial Control
3. Type of relationship.

1. Behavioral Control:

The key issues are instructions and training.

- a. **Instruction:** The more detailed the instruction, the more control the business exercises over the worker.
- b. **Evaluation System:** if the evaluation system measures the details of how work is performed, this would point to an employer/employee relationship
- c. **Training:** If the business provides the worker with training on how to perform the job, this would indicate that the employer wants the job done a certain way. Periodic or on going training on procedures and methods would also be indicative of an employer/employee relationship.

The thing to consider is whether the business retains the RIGHT to control the worker and the details on how to perform the work, regardless of whether the employer exercises that right.

2. Financial Control:

This refers to whether or not the business has the right to control the financial aspects of the workers job.

a. Investment:

Independent contractors have a significant investment in such things as equipment and tools. Independent contractors normally are not reimbursed for business expenses by the business.

The independent contractor would also bear any losses

3. Type of relationship:

- a. **Written contract**
- b. **Employee type benefits provided:** Such things as insurance, pension plans, paid vacations, sick days and disability insurance
- c. **Permanency of the relationship:** Is it for an indefinite period of time or is it only for a specific project or timeframe?
- d. **The services provided are a key business activity**

The key in reviewing all these factors is to look at the entire relationship, consider the degree or extent of the right to direct or control, and to document each of the factors used in making the determination.

Oregon Law

Although some areas of the state and federal guidelines are similar, there are some very important differences that you must be aware. **Oregon Revised Statute 670.600** spells out specific standards that **MUST** be met to be classified as an independent contractor.

Simply put, to be classified as an independent contractor, the individual must meet all these standards:

- Be free from direction and control;
- Be engaged in an independently established business;
- Be licensed under ORS 671 or 701 (Construction Contractors Board, State Landscape Architect Board, State Landscape Contractors Board, or State Board of Architect Examiners) if required for the service; and
- Be responsible for other licenses or certificates needed to do the work.

The Oregon Employment Department, Oregon Department of Revenue, Construction Contractors Board, and Landscape Contractors Board have all adopted the same criteria.

1. What is Direction and Control?

This is similar to the IRS definition of behavioral control. The employer has the right to determine how the work is done or the “means and manner” in which the work is performed. (Set schedules, determine the work process or procedures, how the job is to be done and when it is to be completed).

There is also the manner of control. The employer sets the conditions on how the people must conduct themselves. This is called “narrowly set conditions” (how to dress, working on site only when the employer is there, determining what specialized training is needed to allow the individual to complete the job).

2. Independently Established Business Standards:

This is the biggest difference between the state and federal definitions. The individual must meet at least three of the five requirements listed in the law to meet this particular standard.

- a. **Separate Business or Location:** Must maintain a business location that is separate from the work site, or is located in the part of the home used for business purposes. It must be a clearly established location with its own phone lines, etc.
- b. **Bear Risk of Loss:** Individual is responsible for correcting any poor or substandard work, must provide a warranty for the work, be able to enter into fixed price contracts, negotiate indemnity agreements or buy liability insurance, performance bonds, or “error and omissions” insurance. They can also be sued for breach of contract.
- c. **Investment:** Similar to IRS definition of financial control. The individual purchases all tools equipment and supplies necessary to perform the job, pays for the premises or facilities where the services are provided (shop or office), and pays for any licenses, certificates, or specialized training needed to perform the services.

d. Provide Services on contract for Two or More People Within a 12

Month Period: The individual contracts with two or more individuals within a 12 month period or can show that they have advertised or promoted the business to get new contracts. (ads in the yellow pages, business cards, newspaper advertising etc.)

e. Right to Hire and Fire.

The simple act of creating or establishing a business entity such as a corporation, partnership or LLC, does not by itself establish that a person is an independent contractor or meet the standard of an independently established business.

To summarize, an individual must meet **all** these standards to be considered an independent contractor:

1. Be free of direction and control, subject only to the right of the service recipient to specify the desired result,
2. Licensed as required for the service, such as through the construction Contractors Board or Landscape Contractors Board,
3. Responsible for all other licenses or certificates necessary to provide the service, **and**
4. Are customarily engaged in an independently established business, meeting at least three out of the five requirements discussed earlier.

If all these standards are not met, the individual is classified as an employee. What is important to bear in mind is that if an individual is determined to be an employee by one agency, they are classified as an employee by the other partner agencies.

For Workers Compensation, they follow the above standards with the exception that they do not require that the individual show that they have an independently established business.

The bottom line is that businesses must weigh all these factors when determining whether a worker is to be classified as an employee or an independent contractor. No factor standing alone can make that determination. For Oregon tax purposes, **ORS 670.600** must be looked at in its entirety when making a determination.

Unfortunately, ignorance of the law is no excuse. If there are any doubts, as to whether a worker should be classified as an independent contractor or an employee, contact the appropriate agency for additional information:

Oregon Department of Revenue
ic.info.dor@state.or.us or call 503 378-4988/800 356-4222
TTY 800 866-7204

Oregon Employment Department
taxinfo@emp.state.or.us or call 503 947-1520
TTY 711

Depart. Of Consumer and Business Services/Workers Comp. Division
wcd.employerinfo@state.or.us or call 503 947-7815/888 877-5670
TTY 503 947-7993 or Sprint Relay

Oregon Bureau of Labor and Industries
BOLI.MAIL@state.or.us or call 971 673-0761

Construction Contractors Board
ccb.info@state.or.us or call 503 378-4621
TTY 503 373-2218

Landscape Contractors Board
lcb.info@state.or.us or call 503 986-6561

Internal Revenue Service (IRS)
www.irs.gov or call 800 829-1040

www.oregonindependentcontractors.com

Who is an Independent Contractor?

As of January 1, 2006, Oregon's newly revised independent contractor law is effective. An individual or business entity that performs labor or services for remuneration shall be considered an independent contractor if they meet ALL of the standards outlined in the new law.

Oregon Revised Statute 670.600, defines independent contractor for Oregon Department of Revenue, Employment Department, Construction Contractors Board, and Landscaping Contractors Boards.

Independent contractor law has not changed as it relates to the Workers Compensation Division or Bureau of Labor and Industries.

If you have maintained an ongoing business relationship with an independent contractor beginning before January 1, 2006, the provisions of the old law apply to your relationship through December 31, 2005, and the provisions of the new law apply to your business relationship as of January 1, 2006.

The new law considers service providers to be independent contractors if they:

- Are free from direction and control, subject only to the right of the service recipient to specify the desired result.
- Are licensed under ORS 671 or 701 (Construction Contractors Board, State Landscape Architect Board, Landscape Contractors Board or State Board of Architect Examiners) if required for the service.
- Are responsible for other licenses or certificates necessary to provide the service.
- Are customarily engaged in an independently established business (if they meet 3 out of the 5 below):
 1. Maintain a business location that is:
 - a. Separate from the business or work location of the service recipient; or
 - b. In a portion of their own residence that is used primarily for business.
 2. Bear the risk of loss, shown by factors such as:
 - Entering into fixed price contracts;
 - a. Being required to correct defective work;
 - b. Warranting the services provided; or
 - c. Negotiating indemnification agreements or purchasing liability insurance, performance bonds, or errors and omissions insurance.
 3. Provide contracted services for two or more different persons within a 12-month period, or routinely engage in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 4. Make a significant investment in the business through means such as:
 - Purchasing tools or equipment necessary to provide the services;
 - a. Paying for the premises or facilities where the services are provided; or
 - b. Paying for licenses, certificates or specialized training required to provide the services.
 5. Have the authority to hire and fire other persons to provide assistance in performing the services.
 - Note: A person who files a Schedule F as part of their income tax return and also performs farm labor or farm services reportable on a Schedule C of an income tax return isn't required to meet 3 out of the 5 independently established business requirements.
 - The creation or use of a business entity, such as a corporation or limited liability company, does not establish that the individual providing services will be considered an independent contractor.

Independent Contractor vs. Employee

Free from direction and control	Means and manner of work are controlled by employer
Does tasks in own way	Does tasks the employer's way
Has necessary skills and training to complete job	Trained by employer to perform job
Has an assumed business name	Works under the employer's assumed business name
Has a business location	Works at employer's business location
Performs services for multiple customers	Works for one employer, may serve that employer's customers
Sets own hours	Works hours set by employer
Determines own price for contracted services	Accepts wage, salary, or commission determined by the employer
Not eligible for employee benefits	May be covered by minimum wage, overtime, safety, unemployment, and workers' comp
Directly affected by business profit or loss	Not directly affected by employer's profit or loss
Owens equipment and tools used to complete job	Employer provides and controls equipment and tools
Purchases materials and supplies needed to do job	Employer purchases materials and supplies
Personally liable for errors and/or accidents	Employer liable for employee errors and/or accidents
Files self-employment taxes. Receives a Form 1099-MISC	Does not file self-employment taxes. Receives a Form W-2 from employer
Has right to hire and fire workers	Is hired and/or fired by employer
Must legally complete each contract	May quit working for an employer at any time

24Aug2007 – Oregon Dept of Revenue Licensed Practitioner Liaison, IRS Briefing Tip Sheet

F 2290 e-File Mandate for Some –

Two software companies have passed BATS Testing for 2290 e-File

<http://www.irs.gov/efile/lists/0,,id=172865,00.html>

2290 e-File mandate for 25 or more vehicles

<http://www.irs.gov/efile/article/0,,id=170570,00.html>

Phone Customers can still claim the Excise Tax Refund on Telephone Service

<http://www.irs.gov/newsroom/article/0,,id=173222,00.html>

New Rule for Registration by EROs of e-File web sites (by September 10th)

<http://www.irs.gov/efile/article/0,,id=172577,00.html>

Frequently Asked Questions on this topic

<http://www.irs.gov/efile/article/0,,id=172650,00.html>

Excerpt:

I am an ERO that e-files returns. Does this apply to me?

Authorized IRS *e-file* Providers, including ERO's, Intermediate Service Providers or Online Service Providers, NOT affected by this rule include those that:

- 1) Do not have an internet website that obtains taxpayer information from a taxpayer or third party via the internet for the purpose of e-filing returns,
- 2) Have a website for informational and/or marketing purposes only,
- 3) Only receive or send taxpayer information via e-mail,
- 4) Do not use websites to collect taxpayer information and transmit the returns through third party transmitters,
- 5) Prepare returns and use Provider's website to e-file their returns, or
- 6) Only provide a hotlink to another company's website that allows taxpayers to input taxpayer information.

E-IRS Seminars/Practitioner Liaison Meetings – 2 All-Day Events

September 25, 2007 – La Grande, OR (SBDC/Eastern Oregon University)

September 26, 2007 – Pendleton, OR (SBDC/Blue Mountain Community College)

Phone Forum on EFTPS Batch Provider – September 13, 2007 (www.attevent.com)

E-IRS Seminar – All Day Event – September 6, 2007; Best Western University Inn, Moscow, Idaho

Southern Oregon Events – Brian Wozniak, Stakeholder Liaison (Oregon) will be presenting for IRS.

Klamath Falls:

August 29th 2007 from 1:00 – 5:00 PM
Klamath Community College
Building #2 Room 207
7390 South 6th Street
Klamath Falls, OR 97603

To register please contact Vicki Baker at (541)885-2170 or via email at protaxsolutions@msn.com

Medford:

August 30th 2007 from 1:00 – 5:00 PM
Rogue Valley Career Center
688 Market St
Medford, OR 97504

Medford - There is a \$5 seminar fee payable by check or cash at event check-in. To register please contact Mary Lee Hurd or Stacey Harvey with the Southern Oregon University SBDC at (541)772-3478 or email Mary Lee at Hurd@sou.edu