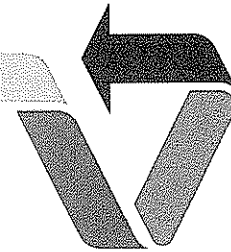


VENTURA REGIONAL SANITATION DISTRICT

1001 PARTRIDGE DRIVE, SUITE 150 ■ VENTURA, CA 93003-0704



A Public
Waste
Management
Agency

January 27, 2012

Board of Directors
Ventura Regional Sanitation District
Ventura, California

VRSD APPOINTED OFFICIALS' PROPER REPORTING TO IRS - EMPLOYEE WAGE DETERMINATIONS

Summary

Based on the District auditor's letter (Attachment 1), District staff will continue to treat the Ventura Regional Sanitation District (VRSD) Board of Directors as independent contractors and will be issued a MISC-1099.

Background

The recent Federal, State and Local Government (FSLG) web training in June 2010 attended by staff indicated that elected and appointed officials are usually considered employees. FSLG is a division of the Internal Revenue Service dedicated specifically for federal, state and local governments. Staff contacted the District's auditors, RAMS, and their initial understanding is that "elected and public (appointed) officials are considered employees under Internal Service Revenue Code section 3401(c). However, in consulting with their tax advisors, it was determined that the VRSD Board of Directors is considered independent contractors and Form 1099 is the correct form to use to report compensation.

Staff also contacted the IRS, via email, to get clarification and/or determination if the VRSD Board of Directors should be treated as an employee of the District or an independent contractor. According to the IRS, neither workers nor firms are required to request a status of determination. Basically, IRS is leaving the determination to the District by reviewing Publication 15A, Employer's Supplemental Tax Guide. The IRS has notified staff to file Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, if we would like the IRS to make a determination in this matter.

In the past 18 months at least two other dependant Districts have switched from 1099 to W-2 for reporting Board income. The known Districts are Ventura County Transportation District (VCTC) and the Gold Coast Transit, JPA. VRSD may be the last dependant District to be reporting Board income on 1099s. The rule appears to be vague in this matter. Staff feels that either method is acceptable for reporting income.

Ventura County • **CITIES:** Camarillo • Fillmore • Ojai • Oxnard • Port Hueneme • San Buenaventura • Santa Paula • Thousand Oaks

SPECIAL DISTRICTS: Camarillo Sanitary • Camrosa Water • Channel Islands Beach Community Services • Montalvo Municipal Improvement •

Ojai Valley Sanitary • Saticoy Sanitary • Triunfo Sanitation • Ventura County Waterworks Nos. 1 and 16

J. Demillo

Staff has not contacted these other Districts as to their research or auditor's determinations. For consistency, staff is recommending to support the VRSD's auditor's recommendation for continuing with 1099 reporting.

Please contact me at vickiedragan@vrsd.com or 658-4646 if you have any questions.

Financial Impacts

None.

Recommendation

It is recommended that the Board continue with 1099 reporting for appointed officials' income.

Vickie Dragan
VICKIE DRAGAN – DIRECTOR OF FINANCE & ADMINISTRATION

Enc.

APPROVED FOR FEBRUARY 2, 2012 AGENDA


Mark Lawler – General Manager

September 30, 2010

To: Ventura Regional Sanitation District

From: Terry Shea, Partner

Subject: Employee Wage Determinations

Purpose

The purpose of this memo is to clarify the IRS's position concerning compensation for elected and appointed government officials.

Definition

IRS regulations dictate that generally, any individual who serves as a public officer is an employee of the government for whom he or she serves. Therefore, each government entity is responsible for withholding and paying Federal income tax, social security and Medicare taxes, and issues a Form W-2, Wage and Tax Statement, to the public official.

However, the officials who make up the board of directors for Ventura Regional Sanitation District appear to be employees of the specific municipalities and districts they serve, rather than employees of VRSD. An appointment to the VRSD Board of Directors is done as an additional duty pertaining to the municipalities and districts they primarily serve. Therefore, treatment of the VRSD Directors as independent contractors appears correct.

This is confirmed through the use of the IRS's Common Law Rules and facts that provide evidence of the degree of control and independence, which fall into three categories:

Behavioral: Does the entity control or have the right to control what the worker does and how the worker does his or her job?

Financial: Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.)

Type of Relationship: Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business?

Entities should weigh each of these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another.

The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

The IRS specifically makes mention of examples of public officers: the president and the vice president; a governor or mayor; the secretary of state; a member of a legislative body, such as a state legislature, county commission, city council, school board, utility or hospital district; a judge, a justice of the peace, a county or city attorney, a marshal, a sheriff, a constable and a registrar of deeds; tax collectors and assessors; and members of advisory boards and committees.

When a public office is compensated solely on a fee basis, then the person who serves in that capacity is considered to operate a trade or business rather than be considered an employee. This exception only applies when the fees are received directly from the public rather than from the government. A good example of this is a building inspector who is compensated solely from fees paid directly to him or her by clients is considered to operate a trade or business and is not treated as an employee of the government.

Recommendation

In order to comply with the IRS guidelines for compensation of public officials, whether elected or appointed, it is our opinion that reporting compensation provided to the directors as independent contractors with Form 1099 is correct.

Copy to:

Ventura Regional Sanitation District Board of Directors
Mark Lawler, General Manager Vickie Dragan, Director
of Finance and Administration