



OFFICE OF AUDITOR OF STATE
STATE OF IOWA

David A. Vaudt, CPA
Auditor of State

State Capitol Building
Des Moines, Iowa 50319-0004

Telephone (515) 281-5834 Facsimile (515) 242-6134

AOS Technical Update – January 2011
School Districts – Independent Contractor vs. Employee

We continue to receive questions as to whether or not employees who perform other services for the district where they are employed may be treated as an independent contractor for the "other services" they perform. We just visited this issue again with the Iowa Department of Education (IDOE) and IRS.

Kristy Maitre, IRS provided the following Internal Revenue Code, IRC, reference:

IRC 3121(c) Included and excluded service

"For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term 'pay period' means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b)(9)."

Carol Greta, IDOE also provided the following excerpt from the NASO (National Association of Sports Officials) website:

"Generally, a worker's status will be determined by the business, not the worker, and is sometimes controlled by a matter of law. For example, if the officials are employees of a school district, that school district should treat them as employees for officiating despite the common law factors."

IPERS previously determined that even though the individual may otherwise be a covered employee, the income received as a result of performing referee services for varsity and junior varsity athletic events for which a license is needed from the Iowa High School Athletic Association, is excluded from IPERS coverage.

CONCLUSION:

The IRS requirements are clear. As such, additional payments to employees of a district who provide additional services to the district should be handled through the district's regular payroll process and reported as wages on the employee's W-2.