

# **SBOA County Auditors Conference**

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**Presenter:**

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# FEDERAL EMPLOYMENT TAX RESPONSIBILITIES

- **Employee Determinations**
- **Fringe Benefits**
- **Audit Preparation**



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# Resources

- IRS Web site at [www.irs.gov/govts/fslg/index.html](http://www.irs.gov/govts/fslg/index.html) has wealth of FSLG information.
  - FSLG Newsletter –quarterly, electronic notices
  - FSLG Fact Sheets –various issues: telephone tax, cell phones
  - FSLG FAQs –reporting/expense issues
  - FSLG Toolkit –
    - Public Employers Toolkit --forms, publications
    - Govt Entity Compliance Toolkit –**Compliance checks/Exams**
  - Taxable Fringe Benefits Guide –Link to most current
  - Quick Reference Guide –Link to most current
  
- “SSA/IRS Reporter A Newsletter for Employers” –posted quarterly. Year-end has **excellent tax reconciling tips.**  
[www.socialsecurity.gov/employer/pub](http://www.socialsecurity.gov/employer/pub)

# Resources

## Federal-State Reference Guide

Pub 963 <http://www.irs.gov/pub/irs-pdf/p963.pdf>

## Employer's Tax Guide to Fringe Benefits

Pub15-B, <http://www.irs.gov/pub/irs-pdf/p15b.pdf>

## Taxable Fringe Benefit Guide (1/ 2010)

\* [http://www.irs.gov/pub/irs-tege/fringe\\_bnft\\_flgsg.pdf](http://www.irs.gov/pub/irs-tege/fringe_bnft_flgsg.pdf)

## Quick Reference Guide for Public

**Employers** (2/2010) \* [http://www.irs.gov/pub/irs-tege/public\\_employers\\_outreach\\_guide.pdf](http://www.irs.gov/pub/irs-tege/public_employers_outreach_guide.pdf)



# GOVERNMENTAL ENTITY EMPLOYEES

- Elected and Appointed Officials
- Police/Security/Fire
- Health Professionals
- Election workers
- All Groups under a Section 218 Agreement



# Elected And Appointed Officials

## Officials

- Elected Officials are ALWAYS Employees for Federal Income Tax Withholding--IRC 3401(c) 3401(c)
- Elected and Appointed officials will usually be be employees for FICA Withholding--IRC 3121(d)(2), due to these factors:
  - Position established by law
  - Duties defined by statute
  - Performs duties as a public official
  - Responsible to the public
  - Paid out of governmental funds



# Elected And Appointed Officials

## Officials

### Examples

- ❑ Mayor
- ❑ County or City Attorney
- ❑ Judge or Justice of the Peace
- ❑ Building Inspector
- ❑ Board Members
- ❑ Road Commissioner
- ❑ Animal Control Officer



# EMPLOYEE DEFINED:

- **IRC 3121(d) and Reg. 31.3121(d)-1**
  - **Any individual under usual common law rules**
  - **Statutory Employees**
  - **Any individual who performs services that are included under an agreement entered into under Section 218 of Social Security Act**



# What is a 218 Agreement?

- Agreement between State and SSA for for Social Security and Medicare Coverage Coverage
- Voluntary
- Most originated in 1950's-can still be modified
- Agreements cover positions, therefore, therefore, any worker filling that position is position is covered
- Contact Kathryn Cimera at PERF to obtain obtain a copy of yours: (317) 234-3708 3708



# COMMON LAW STANDARD

- ❖ **Employer-employee relationship exists when the business for which the services are performed has the right to direct and control the worker who performs the services**



# COMMON LAW (Continued)

❏ Worker is subject to the will and control of the business:

❏ not only as to what work shall be done but also

❏ how work shall be done

**NOTE:** The business does not have to actually direct or control the way the work is done – as long as the employer has the **right** to direct and control the work.



# Common Law Factors

**IRS has three main  
categories of  
evidence**



# Categories of Evidence

**Facts that provide evidence of the degree of control and independence fall into three categories.**

- ◆ **Behavioral Control**
- ◆ **Financial Control**
- ◆ **Relationship of the Parties**



# Behavioral Control

- Are instructions provided?
- Who determines work schedule—hours/days, locations etc?
- Is training provided?
- Are there required methods or procedures to follow?
- What assistants are hired to help with the work?
- Who decides where to purchase supplies and services?



# Financial Control

- Who provides the office space, supplies, computer, and other business equipment?
- Are there unreimbursed business expenses?
- Who pays assistants?
- What is payment arrangement (i.e. hourly rate, monthly or by job)?
- Does the worker advertise services?
- Does the worker seek additional business opportunities and work in the relevant market?
- **Is there an opportunity to make a profit or loss as a result of business decisions?**



# Relationship of the Parties

- Does the payer provide benefits (paid leave, health, life, pension, etc)?
- Is the worker covered by payer's insurance?
- Is there a continuous relationship?
- Is there a written contract?
- Are the services provided an integral part of the business operation?



# Independent Contractor

## •Some Factors that may indicate A Worker IS AN Independent contractor

- *Makes own schedule*
- *Buys own products*
- *Has own phone number*
- *Furnishes own supplies*
- *Furnishes own equipment*
- *Makes a profit or loss as a result of his own business decisions*





# Employees...

## •Some Factors that may indicate A worker IS AN employee

- ***Required to wear uniforms***
- ***Required to work certain hours***
- ***Does not handle own sales receipts***
- ***Does not make own appointments***
- ***Owner provides training***
- ***Owner provides supplies and materials***
- ***Can quit job without liability to employer***
- ***Stands no risk of loss***



# Employee or Independent?

- Funding for the work is through a Grant
- Careful analysis should be made to determine if common law factors are present
- Form SS-8 can be submitted for determination of treatment



# IRS Reclassifications

 Payment reclassification

 Worker reclassification



# Independent Contractor vs. Employee

- **Publication 1779** Provides factors used to help determine worker status as either an independent contractor or an employee
- **SS-8** Can be filed by firm or worker with Internal Revenue Service to determine worker status



# Wage Reporting

**Wages** = all compensation  
provided to **employees**

 Includes Payments & Benefits



# COMPENSATION

- Cash Wages
- Non-Cash Wages
- Nonaccountable plan payments
- Supplemental Wages
- Awards and Prizes



# Cash Wages

- **Salary**
- **Cash/Gift Certificate**
- **Vacation/Sick Pay**
- **Per Diems/Stipends**
- **Some Expense Reimbursements**



# Non-Cash Wages

 **Fringe Benefits**

 **Fair market value of non-cash items (cars, cell phones, meals, clothing, etc.)**



# Employee Business Expenses

- Reimbursed employee expenses that are accounted for are for are not taxable to the employee. *(Accountable Plan)*
- Reimbursed employee expenses that are not accounted for accounted for are taxable to the the employee. *(Nonaccountable (Nonaccountable Plan))*

# ACCOUNTABLE PLAN?

**Allowance or reimbursement  
where amounts are non-taxable,  
if certain rules are met**



# THREE RULES:

- **Business Connection**
- **Adequate Accounting**
- **Excess returned on a timely basis**



# ACCOUNTABLE PLAN

## **Business Connection**

**Directly related to Trade or Business**  
**Deductible on 1040**

## **Adequate Accounting**

**Verify: Time, Place, Amount, Business purpose**

## **Return Excess timely**

**Methods—Periodic Statement , Fixed Date**



# NON-ACCOUNTABLE PLAN:

- DOES NOT MEET ALL 3 REQUIREMENTS FOR AN ACCOUNTABLE PLAN
- BENEFIT IS FULLY TAXABLE WHEN PAID



# Fringe Benefits



# Definition and Taxability of Fringe Benefits

- A fringe benefit is a **form of pay** for the performance of services
  - Property
  - Services
  - Cash or Cash Equivalent
- **All** fringe benefits are taxable and must be included in the recipients pay unless the law **specifically** excludes it.



# Working Condition Fringe

IRC 132(d)

## Requirements:

- **Benefit must relate to employer's business**
- **Employee would have been entitled to a 1040 deduction**
- **Business use must be substantiated with records**
- **Additional requirements for: Employer-provided vehicles, cell phones, etc.**



# MEAL ALLOWANCES/ REIMBURSEMENTS



# MEAL ALLOWANCES/REIMBURSEMENT

- **Meals While Traveling**
- **Meals While Not Traveling**
  - **Meals with meetings or entertainment**
  - **De minimis meal allowances**



# MEAL ALLOWANCES/REIMBURSEMENTS

## ■ Meals While Traveling

### ■ Tax-Free Requirements

- Must be away from tax home overnight, or long enough to require substantial sleep or rest
- No set number of hours away or distance
- Substantiation required



# MEAL ALLOWANCES/REIMBURSEMENT

## Meals Not Away From Home

- Meals with meetings
- Meals with entertainment
- De minimis meals



# MEAL ALLOWANCES/REIMBURSEMENTS

## ■ Meals with Meetings or Entertainment Entertainment

### ■ Tax-free if meal meets test:

- “Directly-related” test, or

- “Associated with” test



# MEAL ALLOWANCES/REIMBURSEMENTS

## Tax-Free Meals With Meals/Entertainment

### “Directly-Related” Test

-  main purpose of meal is business business
-  clear business setting or
-  active business conducted



# MEAL ALLOWANCES/REIMBURSEMENTS

## ■ “Directly Related” Meals - Tax-Free Free

■ Meals as part of business meetings  
meetings

■ Meals at service club or professional  
professional meetings

■ Example- Rotary, FOA, CPA



# MEAL ALLOWANCES/REIMBURSEMENTS

## ■ “Associated With” Test

### ■ Meals in clear business purpose

- Part of event – everyone eats together together

- Included in registration fee

### ■ Substantial business

discussions/negotiations directly preceding  
preceding or following meal – i.e. meal served  
served in separate room but everyone eats  
eats together



# MEAL ALLOWANCES/REIMBURSEMENTS

## ■ “Associated With” Meals - Tax- Tax-Free

■ Meals at conventions

■ Meals at conferences



# MEAL ALLOWANCES/REIMBURSEMENTS

 **NOTE:** Meals consumed en-route to daily business events are not tax deductible.

-  i.e. Breakfast or dinner while traveling to and from a daily convention or conference would not be deductible.
-  No hotel = no tax free meal reimbursement while traveling to and from event. Time away from home is not considered for tax free meal reimbursement.
-  If you break for lunch and everyone is responsible for their own lunch arrangements, the reimbursement for lunch is fully taxable.



# MEAL ALLOWANCES/REIMBURSEMENTS

## ■ Substantiation Requirements

### ■ Meals While Traveling Away From From Home

■ per diem method, or

■ actual expense method



# MEAL ALLOWANCES/REIMBURSEMENTS

## Meals While Traveling Away from Home

### Actual Expense Reimbursements

#### Tax-Free if:

- paid under an accountable plan
- receipts and/or records required
- verify amount, date, business purpose



# MEAL ALLOWANCES/REIMBURSEMENT

## ■ Substantiation Methods

### ■ Meals While Not Away From Home

■ Taxable if Per Diem reimbursement

■ Tax-free if actual expenses reimbursed under Accountable Accountable Plan and “Associated with” or “Directly “Directly Related to” tests met met

# MEAL ALLOWANCES/REIMBURSEMENTS

## De Minimis Meal Allowances

### Allowances

#### Tax Free if:

- Meal is small in value & occasional
- Not provided routinely or often
- Provided for OT work and
- Enables employee to work OT



# EMPLOYER PROVIDED VEHICLES



# EMPLOYER - PROVIDED VEHICLES

## ❏ Personal use is taxable

- ❑ Commuting

- ❑ Vacation, weekend, use by spouse

## ❏ Valuing Personal Use

- ❑ Employee must keep record of personal and business use

- ❑ No records kept - all use is taxable  
–withhold and report on Form W-2



# VALUING PERSONAL USE - THREE RULES:

- Automobile Lease Valuation Rule
- Cents-Per-Mile Rule
- Commuting Rule

\*\*\*Quick Reference Guide pages 9-10  
10

Taxable Fringe Benefit Guide pages 52-  
pages 52- 56

Publication 15B pages 22-25

# Lease Valuation Rule

## Reg 1.61-21(d)

- Compute Personal Use
- Determine what employee would pay to lease auto (FMV)-chart in Pub Pub 15-B
- Multiply FMV by % of personal use
- Add gasoline, if provided, at 5.5 cents/mile



# CENTS PER MILE RULE

## Reg.1.61-21(e)

- Regular business use at least 50%
- FMV < \$15,300 auto, \$16,000 truck/van (2010)  
(2010)
- Min. mileage rule: driven at least 10,000 miles  
miles
- For **2010**, rate is **50 cents per mile**  
(includes 5.5 cents/mile for gasoline provided  
provided)



# COMMUTING VALUATION RULE

Reg. 1.61-21(f)

- Personal use for commuting can be valued at \$1.50 each way or \$3.00 round trip



# REQUIREMENTS FOR COMMUTING RULE

- Employer owned/leased vehicle
- Bona fide business reason-requiring employee use
- WRITTEN POLICY allowing only De Minimis personal use
- Employee does not use vehicle for other personal use
- The employee is not a government control employee defined as:
  - ✓ An elected official
  - ✓ An employee who is paid at least \$145,700 (2010)

# EMPLOYER PROVIDED VEHICLES

## ■ Qualified Non-Personal Use Vehicle

■ By design, vehicle is unlikely to  
have personal use

■ Use of vehicle is tax-free, including  
commuting

■ Substantiation/recordkeeping of vehicle  
use not required



# QUALIFIED NON-PERSONAL USE VEHICLE

(Reg. 1.274-5T(k)(2))

- Clearly marked police, fire & public safety safety officer vehicles (marking on license license plate doesn't qualify)
- Unmarked law enforcement vehicles
- Ambulance or hearse
- Vehicle with gross weight over 14,000 lbs. lbs.
- 20 passenger bus and school bus
- Tractor and other farm equipment
- Delivery truck with driver seating only



# QUALIFIED NON-PERSONAL USE VEHICLE

 Clearly marked police, fire & public safety officer vehicles:

--Employee must always be on call

--Employer requires employee to commute in vehicle

--Employer prohibits personal use (other than commuting) travel outside of employee's jurisdiction



# QUALIFIED NON-PERSONAL USE VEHICLE

## Public Safety Officer:

- Individual serving public agency in official capacity (with or without compensation) as a:
- Law Enforcement officer with power of arrest, authority to carry firearms and execute search warrants      arrest, execute
- Firefighter
- Chaplain
- Member of a rescue squad or ambulance crew



# QUALIFIED NON-PERSONAL USE VEHICLE

## ■ Unmarked Law Enforcement vehicles vehicles

### Law Enforcement officer:

- An individual who is employed full time by a government unit which is responsible for crime crime prevention/investigation of crimes
- Individual is authorized by law and regularly carries carries weapon, makes arrests, execute search search warrants, etc.



# QUALIFIED NON-PERSONAL USE VEHICLE

## ■ Unmarked Law Enforcement vehicles:

- ❏ Employer must officially authorize personal use
- ❏ Employee must be employed by agency/department that owns vehicle and authorizes personal use
- ❏ Personal use must be incidence to law enforcement use, ability to report directly from home to stakeout, surveillance site or emergency (no vacation recreational use) from or use)



# QUALIFIED NON-PERSONAL USE VEHICLE (Rev. Ruling 86-97)

- Vehicles with loaded GVW under 14,000 lbs
- Pick-up Trucks or Vans-Must be permanently & clearly marked and have permanent modifications
- Pick-up truck modifications include Hydraulic lift gate, lift gate, tanks, drums, permanent side boards
- Van modifications include seating for driver only or only or one passenger, permanent shelving in cargo area OR cargo area always contains equipment, equipment, materials, merchandise used in trade or trade or business



This Qualifies:



Sorry- No:



# This Qualifies:



Because it has this:



# Definitely Not!



And definitely not this one!

A COWASAKI !!



# Cell Phones



- Listed property §280F(d)(4)
  - Susceptible to personal use
- Substantiation rules §274(d)
- Personal use is taxable fringe benefit
  - Taxable even if usage is not over monthly  
monthly amount paid by employer
- Allocate cost between business and personal  
personal use



# CP 2100 Notices

- Publication 1281—Good Resource
- First notice generally received in October  
October
- Lists 1099s with missing TIN
- Lists 1099s with incorrect name/TIN
- Time is of the essence-must act within 15  
within 15 days of date of Notice or date  
date received (whichever is later)
- Follow instructions on Notice
- Maintain Notices; Track repeat vendors on  
vendors on multiple notices



# CP 2100 Notices

- For missing TINs begin back up withholding until TIN is received
- Must make 3 annual solicitations for for TIN (Initial, First annual, second second annual) to avoid penalty
- Maintain copies of annual solicitations solicitations to vendors



# CP 2100 Notices

- For incorrect name/TINs, check against your your records
- Where information agrees, issue 1<sup>st</sup> B Notice Notice with Form W-9
- Cannot solicit TIN information via telephone telephone
- Keep copies of B Notices/correspondence Notices/correspondence sent to vendor
- Begin Back up withholding if certified TIN is TIN is not received within 30 days



# CP 2100 Notices

- Send 2<sup>nd</sup> B Notice where payee is listed on listed on a second CP2100 Notice in a three year period
- Upon issuance of 2<sup>nd</sup> B Notice, vendor vendor must provide either Form SSA-SSA-7028 or IRS Letter 147C to validate validate TIN
- Begin Back up withholding if validated TIN validated TIN is not received within 30 days 30 days



# I GOT A LETTER!

■ DO I PANIC?

■ DO I CALL THE PERSON LISTED  
A CONTACT?

■ DO I SHRED THE  
CORRESPONDENCE?

■ DO I GET ON THE NEXT TRAIN  
OUT?





# IRS COMPLIANCE ACTIVITIES



# IRS Compliance Activities

 **Compliance Check**

 **Examination**



# Compliance Check

**\*Educational tool to help increase voluntary compliance**

**■ Books and records are not inspected**

**■ No attempt to determine tax liability**

**■ Examination may be recommended**

**What to expect during a Compliance Check?**

**<http://www.irs.gov/govt/fslg/article/0,,id=158485,00.html>**



# Examination (a/k/a Audit)

**\*systematic inspection of the books and records of a taxpayer for the purpose of making a determination of the correct tax liability**

- Verify that all appropriate returns were filed timely
- Verify that all deposits were made timely

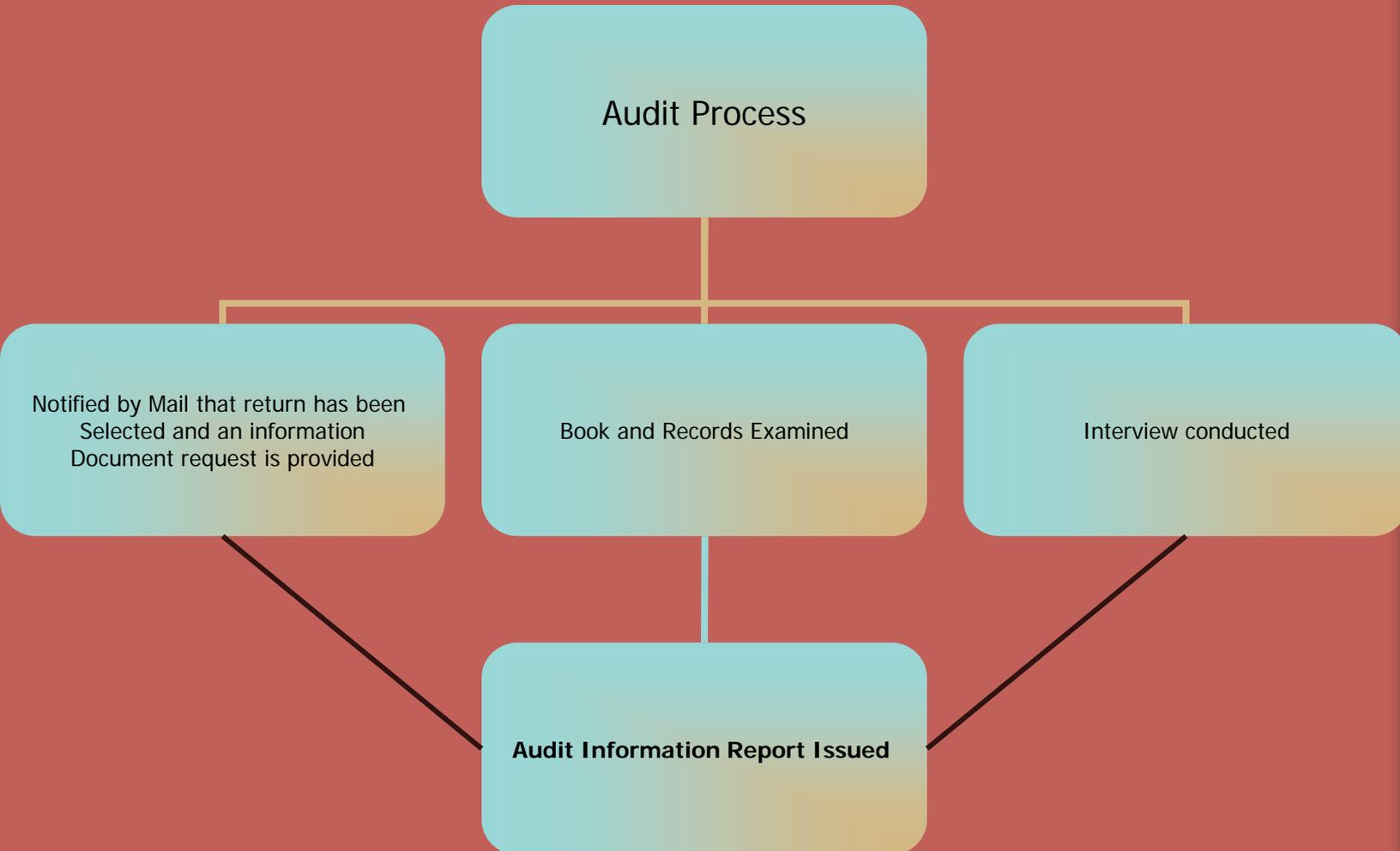


# Examinations

- Returns could be selected due to special special studies or programs
- Obvious errors on face of return
- Comparison to similar sized entities for entities for filing requirements
- Information reports



# Examination Process



# Examinations-Records

- General Ledger
- Cash Disbursement ledger
- Payroll ledger
- Departmental disbursement ledgers  
ledgers (Sheriff/Jail, Extra-curricular, etc)  
etc)
- Accounts Payable
- Support documentation for payments  
payments



# Examinations

- Interview of personnel for payroll, accounts accounts payable
- Review of Form 941, W-2, W-3, 1096, 1099 filed filed
- Review of records for taxable wages, fringe fringe benefits, information reporting for 1099s 1099s
- Review of 1099s for possible reclassification from reclassification from independent contractor to contractor to employee
- Review of personnel policies, handbooks, contracts, board minutes and other records records

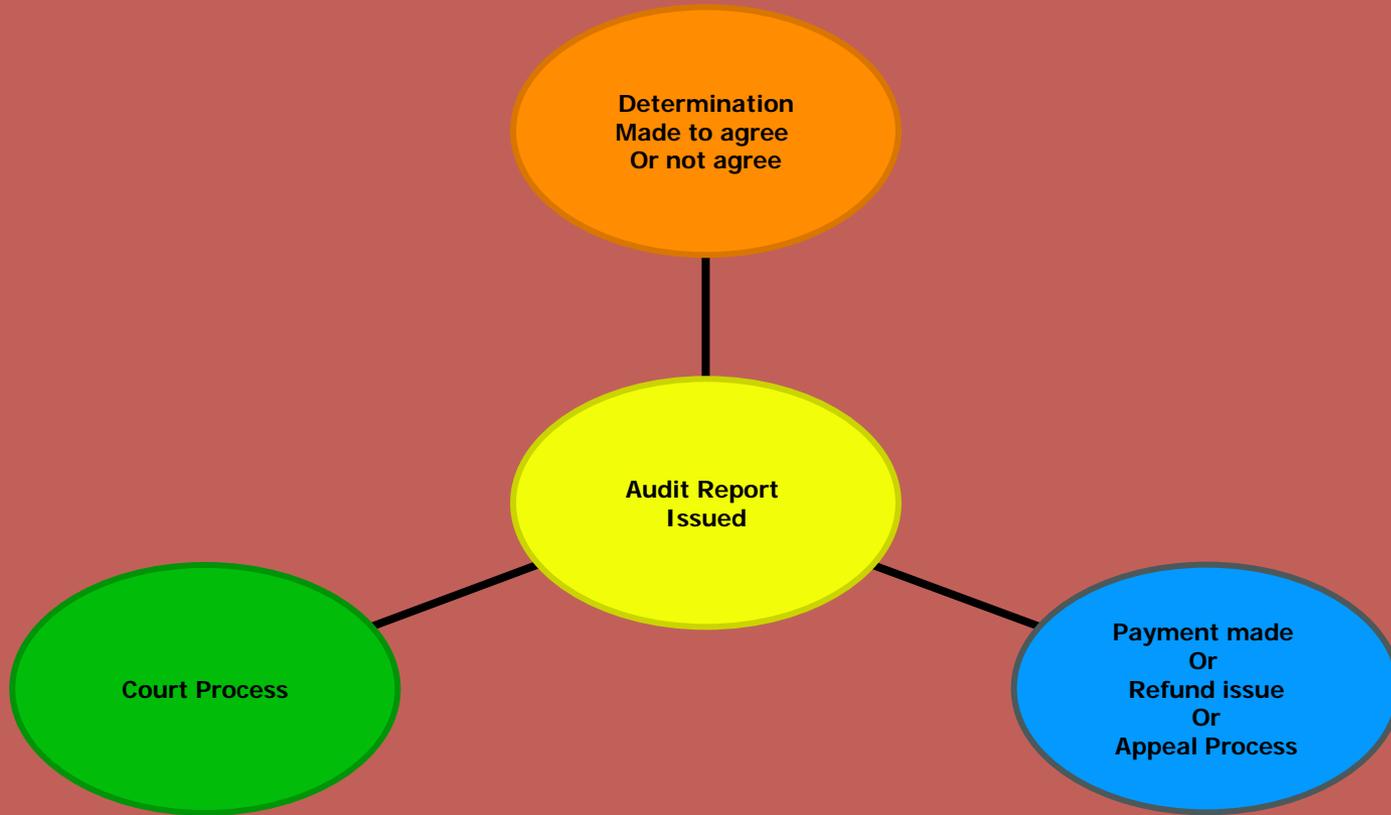


# Examinations

- Information Document Request will be issued for items needed during audit
- Issues will be discussed during examination
- Audit report issued
- Appeal rights explained



# Examination Findings:



# Examinations

For More Information:

- Examination Overview
- Sample Interview Questions
- Information Document Requests  
Requests

<http://www.irs.gov/govt/fslg/article/0,,id=159772,00.html>



# Tax Law Updates

## HIRE ACT (March 18, 2010)

-  Exemption from employer share of FICA of FICA (6.2%) on wages paid to qualifying employees
  -  Federal, State, Local government employers **DO NOT QUALIFY**
  -  Public colleges & university employers **DO QUALIFY**



# Tax Law Updates

## AFFORDABLE CARE ACT

-  Health coverage provided to employee's employee's children under 27 years is tax-free to employee
-  IRS Notice 2010-38
-  Effective March 30, 2010



FEDERAL STATE AND LOCAL  
GOVERNMENTS  
and

**PUBLIC ENTITIES**

**WORKING TOGETHER**



**"HAND IN HAND"**

