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GOVERNOR

ANGELE DAVIS
COMMISSIONER OF ADMINISTRATION

State of Louisiana

Division of Administration

Office of State Uniform Payroll

December 12, 2008

OFFICE OF STATE UNIFORM PAYROLL MEMORANDUM #2009-24

TO: All ISIS HR Paid Agencies

FROM: Jena W. Cary
Director

SUBJECT: IRS Forms 1099-MISC and 1099-INT for Calendar Year 2008

OSUP will prepare IRS Forms 1099-MISC and 1099-INT for the tax year 2008 when required for payroll related activity. Form 1099-MISC is required for wages paid on behalf of a deceased employee and for attorney fees paid pursuant to a back pay award on behalf of an employee. Form 1099-INT is required for interest paid to an employee pursuant to back pay awarded under a statute. In order for OSUP to prepare these forms accurately, each agency is responsible for the timely submission of all documentation to OSUP for all payments requiring special payroll reporting. Agencies must contact OSUP **before payment is issued** for any situation resulting in a Form 1099-MISC or Form 1099-INT. **Please contact a member of the OSUP Wage and Tax Administration Unit immediately if you are aware of the following types of payments previously made to employees, if you have not already done so, in order for OSUP to complete end-of-year processing timely.**

Payments requiring Forms 1099-MISC or 1099-INT:

- Wage payments made on behalf of deceased employees
  Wages paid on behalf of a deceased employee follow special tax treatment and employer reporting requirements. When wages are paid after the death of an employee, the payment is taxable income to the payee (which is generally the estate or beneficiary of the deceased employee). Taxes withheld from such wages vary depending on the nature and timing of the payments. Refer to OSUP Memorandums #2003-13 Deceased Employee's Final Payments, and #2006-01, Legislative Update on Payment of Deceased Employee Wages. **Note:** Both memos should be reviewed due to legislative changes effective June 9, 2005, which removed the $6,000.00 cap for payments made to a surviving spouse and/or major child.

- Back Pay Awarded Under a Statute
  Back pay awarded under a statute is a payment by an employer pursuant to an award, determination, or agreement approved by a court or government agency responsible for enforcing a law that protects an employee's right to employment or wages. Civil Service

Commission hearings resulting in back pay are included within this definition. Form 1099-MISC or Form 1099-INT may be issued due to payment of attorney fees and interest as part of a back pay award:

- Attorney Fees
  The payment of attorney fees will continue to be an agency responsibility. These payments are reported as income for the attorney on Form 1099-MISC through AFS under the agency EIN formerly used for payroll reporting. **OSUP will also issue a 1099-MISC to the employee for attorney fees paid pursuant to a back pay award on the employee's behalf. Agencies must advise OSUP of these payments.** If you have any questions about paying or reporting attorney fees pursuant to a back pay award, contact James Lodge or Gloria Tilley with the Office of Statewide Reporting and Accounting Policy (OSRAP) at (225) 342-1097 or the OSUP Wage and Tax Administration Unit at _DOA-OSUP-WTA@la.gov.

- Interest
  Interest may be awarded as a result of the back pay award and is exempt from payroll tax withholding; however, the payment will be reported by OSUP on Form 1099-INT. Refer to OSUP Memorandum #2009-23, Update to OSUP Memo #2002-04, Back Pay Awarded Under a Statute, for more information.

In OSRAP Memorandum 09-15 issued 12/5/08, general guidelines are given for vendor 1099-MISC status. Guideline 11 indicates "Employees are not 1099 reportable vendors"; OSUP will instead issue a W-2 for compensation for services and certain travel allowances. **1099's should not be processed for reporting employee compensation.** Note that an employee may receive both a W-2 and 1099 if the employee worked as an employee for part of the year and a true independent contractor for the remainder of the year. In this situation, the employee would receive a W-2 from OSUP and a 1099 from the agency. An employee may also receive both a W-2 and 1099 from OSUP if the employee worked as an employee for part of the year and then received final wages upon death or attorney fees paid on their behalf. An IRS compliance audit would identify situations where an employee has received a 1099 and a W-2.

If you have any questions about the information in this memorandum, contact a member of the OSUP Wage and Tax Administration Unit at _DOA-OSUP-WTA@la.gov or (225):

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