



TEXAS TECH UNIVERSITY™

Operating Policy and Procedure

OP 62.37: Establishing Employee/Independent Contractor Status

DATE: September 17, 2008

PURPOSE: The purpose of this Operating Policy/Procedure (OP) is to establish whether a Texas Tech University (TTU), or related entities, worker is considered an employee or an independent contractor, in compliance with federal regulations relating to payment for services rendered.

REVIEW: This OP will be reviewed in October of even-numbered years by the managing director of Payroll and the director of Tax Compliance and Reporting with recommended revisions forwarded to the associate vice president for financial affairs/comptroller and the vice president for administration and finance by November 15.

POLICY/PROCEDURE

1. Tax Identification Number

Any individual or business receiving payment for goods or services is required by the state of Texas to provide a valid nine-digit Social Security Number (SSN), Individual Taxpayer Identification Number (ITIN), or Federal Employer Identification Number (FEIN).

Nonresident aliens performing independent contractor services for TTU should be advised to obtain a SSN or ITIN immediately upon entering the U.S. if they do not already have one. TTU cannot pay any individual unless the individual has a number or proof (receipt from the issuing agency) that application for a number has been made.

2. Foreign Company or Foreign Individual

a. If the individual is a foreign national

- (1) **Before hiring** the individual, the department needs to confirm that the individual has met with the Office of International Affairs to verify that the individual has the proper visa/immigration status; and
- (2) **Prior to payment** to the individual, the department needs to contact the Office of Financial Affairs Tax Compliance and Reporting to determine residency status for tax purposes. If the proper documentation has not been obtained, it may not be possible for TTU to make payments to the individual.

b. If the payee is a foreign individual or foreign company, Internal Revenue Service Form W-9 or Form 8233 must be completed if the payee is claiming any treaty benefits. If TTU does not have the proper Form on file, the payment will be subject to 30% income tax withholding.

3. **Employee/Employer Relationship - Common Law Rule: * IRC Treas. Reg. §31.3401**

A worker is an employee under common law rules if the person for whom the work is performed has the right to direct and control the worker, both as to the final results and as to the details of when, where, and how the work is to be done. Where the employer does not possess that right, the individual involved is an independent contractor, not an employee.

4. **Payments to Employees and Duty to Withhold**

Any person who is a current employee cannot be paid as an independent contractor. Payment must be made through Payroll and appropriate taxes will be withheld. Any former or retired employee who has been paid by TTU during the past twelve months cannot be paid as an independent contractor with appropriated funds; however, payment may be made as an independent contractor with local funds if the independent contractor criteria are satisfied. Payments made with appropriated funds must be made through Payroll and appropriate taxes will be withheld.

Payment to employees is to be made through the Payroll Department on regularly scheduled payrolls in accordance with OP 69.01, and federal withholding tax and OASI will be deducted from the payments for remittance to the appropriate taxing authority.

5. **Independent Contractor Questionnaire Required**

Payments to independent contractors are to be made in accordance with OP 72.09 and OP 72.10. Except as provided in paragraph 6, the *Independent Contractor Questionnaire* (see Attachment A) must be completed by all individuals and businesses operated as sole proprietorships that provide services to TTU.

a. **Payments to Individuals**

The questionnaire must be completed and signed by the individual. The account manager should review, sign, and submit the questionnaire with each *Check Issuance Request (RI)* or *Purchase Order (PO)* for a payment that is to be made payable to an individual. The questionnaire will be reviewed and signed by Tax Compliance and Reporting prior to processing.

b. **Payments to Businesses Operated as Sole Proprietorships**

When preparing an RI or a PO for a payment that is to be made payable to a business operated as a sole proprietorship, the account manager should check the Independent Contractor Database (arranged by vendor name) maintained on the Administration and Finance Information Systems Management Web site (http://www.depts.ttu.edu/afism/IndContractorList/Contractor_List.aspx) to determine if a questionnaire is required. A questionnaire will be required by a business operated as a sole proprietorship either (1) annually or (2) per contract entered into with TTU, depending upon the circumstances.

If required, the questionnaire must be completed and signed by the business owner. The account manager should review, sign, and submit the questionnaire with the RI or PO. The questionnaire will be reviewed and signed by Tax Compliance and Reporting prior to processing. Once approved, the original questionnaire will be forwarded to Purchasing to be kept with the vendor's Form W-9. Purchasing will note that an approved questionnaire is on file and the date(s) such questionnaire is valid in the notes section on the vendor table.

6. Independent Contractor Questionnaire Not Required

a. Payments for Goods

A questionnaire is not required for the purchase of goods or commodities.

b. Payments to Partnerships and Corporations

A questionnaire is not required for payments made to partnerships or corporations for either the purchase of goods or the purchase of services.

c. Payments to Individuals for Workshop Participation

A questionnaire is not required for payments made to individuals for workshop participant fees. Participation of this type does not rise to the level of performing services for TTU; however, all amounts paid to an individual should be included on the individual's personal income tax return. Amounts paid to an individual by TTU totaling \$600 or more during a calendar year will be reported to the IRS as other income; reported as "Other Income" (box 3) on Form 1099-MISC. To meet TTU's reporting obligations, certain information must be obtained from the individual. The *Workshop Participant Information* form (see Attachment B) should be used to gather the required information for payments made to individuals for workshop participant fees.

d. Payments to Individuals for Research Participation

Refer to OP 74.12 for all payments to individuals for research participation.

7. Factors Indicating Employee Status

No one factor or small group of these factors is definitive; all must be weighed against those that indicate an independent contractor status.

- a. The person is required to comply with instructions (oral, written procedures, or manuals) about when, where, and how the work is to be performed.
- b. The person is trained by an experienced employee who works with her/him.
- c. The person's services are integrated into the business operations.
- d. The services must be rendered personally, and the employer is interested in who does the job as well as in getting the job done.
- e. The organization benefiting from the services hires, supervises, and pays the individual.
- f. There is a continuing relationship between an individual and the organization for which the services are performed. Services may be considered continuing even though they are performed at irregular intervals, on a part-time basis, seasonally, or over a short term.
- g. The establishment of set hours of work indicates employer control.
- h. The worker must devote full time to the business of the employer rather than engaging in other gainful work. Full time does not necessarily mean an eight-hour day or a five-day week.

- i. The work is performed on the employer's premises; however, doing the work off the employer's premises does not mean, of itself, that no right to control exists.
- j. The person for whom the service is performed possesses the right to set the sequence of work.
- k. Employer control is indicated if regular reports must be submitted by the worker.
- l. Control is indicated when the employer pays business and/or traveling expenses.
- m. Control is indicated when the employer furnishes the tools and materials with which to perform the services.
- n. An employer has the right to dismiss an employee, and an employee has the right to end the relationship with the employer at any time without incurring liability.
- o. The person is an employee of another business or university, and the person's primary duties are the same as the work to be performed for the university.

8. Factors Indicating Independent Contractor Status

- a. The one for whom the services are being performed does not possess the right to instruct the person about when, where, and how the work is to be performed.
- b. Independent contractors ordinarily use their own methods and receive no training from the one who purchases their services.
- c. An independent contractor may hire, supervise, and pay other workers under a contract and agree to provide materials and labor while being responsible for the attainment of a given result.
- d. Independent contractors are masters of their own time, set their own work schedules, and are responsible only for the end results.
- e. The person is free to work when, for whom, and for as many employers as he/she desires.
- f. Independent contractors are customarily paid by the job in a lump sum or on a commission basis.
- g. The worker furnishes her/his own tools and equipment, subject to the recognition of the fact that, in some jobs, it is customary for employees to use their own hand tools.
- h. A significant investment by a person in facilities used in performing services and offering such services to the general public tends to show independent contractor status.
- i. An independent contractor is generally in a position to realize a profit or suffer a loss as a result of her/his services.
- j. An independent contractor cannot be fired as long as the result produced measures up to the contract specifications.
- k. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion or is legally obligated to make good for failure to complete the job.

Attachment A: Independent Contractor Questionnaire

Attachment B: Workshop Participant Information
