



# North Carolina

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**Memorandum #1068**

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TO: Local Government Officials and Certified Public Accountants

FROM: Sharon Edmundson, Director, Fiscal Management Section

SUBJECT: Volunteer Firefighters Employee/Contractor Status, Identity Theft Protection Act, and Grant Funded Construction Contracts

This memo covers a variety of topics of interest to local governments. The employee/contractor issue for volunteer firefighters has been a topic of discussion recently among many local units in North Carolina. The Identity Theft Protection Act, while passed in the 2005 session of the General Assembly, became effective on October 1, 2006. Finally, in cooperation with the Rural Center, we are highlighting an area of increasing concern across the State regarding grant funded construction projects.

### Volunteer Firefighters Employee/Contractor Status

The Federal-State Reference Guide (Rev.4-2006, IRS Publication 963) a Federal-State cooperative publication issued jointly by the Social Security Administration, Internal Revenue Service and National Conference of State Social Security Administrators, issued guidelines for the reporting of social security and Medicare taxes, and for Federal and State withholdings tax requirements for state, local Indian tribal government employees, and public employers. One of these guidelines concerns volunteer firefighters' employee status. Volunteer firefighters are considered to be in an employer-employee relationship even when that volunteer performs and receives compensation on an on-call contract basis. Volunteers may claim that their services are excluded from employment under the emergency worker exclusion. The Emergency Worker exclusion (IRC 3121(b)(7)(f)) provides that services performed by employees on a temporary basis in the case of fires, storm, snow, earthquake, flood or other emergencies are exempt from being treated as employees. In other words, this exception applies only to temporary workers who respond to unforeseen emergencies such as hurricanes or floods. Firefighters who are on-call and work regularly but intermittently do not qualify for the emergency worker exclusion. When a worker who is termed a *volunteer* receives compensation, and there is an employer-employee relationship, that compensation is wages subject to Federal and State withholding, and social security and Medicare taxes. Those wages must be reported on an annual W-2.

Volunteer firefighters may receive amounts other than salaries that are intended to reimburse them for expenses. To avoid being taxed as wages, these reimbursements must be paid under an *accountable* plan. An accountable plan is one that is designed to reimburse only actual, business

expenses. An accountable plan must (1) require workers to substantiate incurred business expenses, (2) provide advances or reimbursements only for reasonably expected business expenses, and (3) require that any amounts received that exceed substantiated expenses must be returned within a reasonable period. Amounts that are termed *reimbursements* but that are not paid under an accountable plan are subject to Federal and State withholding, and social security and Medicare taxes. Therefore, a per diem or fixed amount paid to a firefighter (or other volunteer), that does not reimburse actual, documented expenses, is includible in Federal and State withholding, is subject to social security and Medicare taxes, and must be reported at year-end on a W-2.

This discussion is provided for informational purposes only. Please consult your payroll provider or independent auditor for more information on this topic.

### **Identity Theft Protection Act**

The 2005 Session of the General Assembly passed Senate Bill 1048 that affects local governments and public authorities. Senate Bill 1048 amended the General Statutes by adding to Chapter 75 a new Article 2A, "Identity Theft Protection Act". This Act covers a variety of topics regarding use and protection of social security numbers, destruction of personal information, security breaches, and reporting of identity theft. This Act became effective October 1, 2006.

*Social Security Number Protection:* A unit may not intentionally communicate or otherwise make available to the general public an individual's social security number. The unit cannot print or imbed an individual's social security number on any card to access services or on any materials that are mailed to the individual. The unit cannot require an individual to transmit or use his social security number over the internet without a unique password/ personal identification number. The unit cannot sell, lease, loan, trade, rent or otherwise intentionally disclose an individual's social security to a third party without written consent. A unit may require a social security number on an application or enrollment document to receive government services or participate in government sponsored activities.

*Acceptable Uses of a Social Security Number:* A unit may require a social security number for collections, opening of an account, background checks, fraud investigations, to obtain credit reports, collect a debt, furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act or to conduct social or scientific research. A unit also may release a social security number for internal verification or administrative purposes.

*Disposal of Records:* A unit must take reasonable measures to protect against unauthorized access to information in connection with its disposal. The reasonable measures must include implementing and monitoring compliance with policies and procedure that require burning, pulverizing, or shredding of papers so that the information cannot be read or reconstructed, and require the destruction or erasure of electronic media and other non-paper media containing personal information. A unit may contract with a third party that is engaged in the business of

record destruction to destroy personal information in compliance with this Act. The unit should engage in due diligence prior to contracting with such a company; that due diligence should include reviewing an annual audit of the company's business operations or compliance with general statutes, checking references, or reviewing the company's disposal policies.

*Security Breach:* A unit shall provide notice to the affected individuals that there has been a security breach, following the discovery or notification by a third party of the breach. The disclosure notification shall be made without unreasonable delay, and shall be consistent with the legitimate needs of law enforcement. Notice should be clear and conspicuous and include a general description of the breach, the type of information that was released, the actions taken by the unit to prevent further unauthorized access to the information, a contact phone number for more information if one is available, and a statement that the individual should remain vigilant in his or her monitoring of available credit reports. Notice may be written and may be delivered electronically if the unit has a valid email address and the individual has agreed to receive such communications electronically. If the cost of notice will exceed \$250,000 or the number of individuals affected exceeds 500,000, or if the unit does not have legitimate contact information for all affected individuals, the unit may use alternative methods for providing notice.

We encourage local governments to work with their attorneys to determine that each unit of government is in compliance with this Act.

### **Grant Funded Construction Contracts**

It has come to our attention that many units of government that have been awarded grant funding for projects from the North Carolina Rural Center, the Clean Water Management Trust Fund, DENR Construction Grants and Loans, and Public Water Supply have not yet executed contracts with those agencies or entities and/or bid those projects. Recently, three units that did not bid their projects for a year or longer after the execution of the Rural Center contract discovered that grant funds were no longer sufficient to complete the project. Construction costs are increasing at a rapid pace and delays can significantly increase the costs of a project. Units that delay bidding their projects risk being forced to find additional funds to complete their project or adjust the scope of their projects.

While many units rely upon engineers and consultants to help them prepare contracts and bid projects, the responsibility still lies with the unit to see that the project is completed on a timely basis and at the lowest possible costs. Units that have been awarded grants from the Rural Center or other granting agencies should take action to have the contract approved and the project bid as quickly as possible.

If you have any questions or concerns about any of the topics discussed, please contact Dean Cunningham at (919) 807-2390.