Misclassified Employee Withholding Field Audits

Shondra Cutno
Assistant Secretary

LDR
Tax Administration Group III
### Audit Staff

<table>
<thead>
<tr>
<th>Field Audit Income Tax Division</th>
<th>Audit Review &amp; Appeals Division</th>
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<tbody>
<tr>
<td>• Director – Billy Pittman</td>
<td>• Director – Tabitha Long</td>
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<tr>
<td>• Assistant Director – Krystal Bolton</td>
<td>• Assistant Director – David Hansen</td>
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<td>• 2 Individual Income Tax Teams, 8 auditors</td>
<td>• 3 Tax Reviewers</td>
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<tr>
<td>• Supervisor Jennifer Hillman</td>
<td>• Camille Dunbar</td>
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<td>• Supervisor Laura Perkins</td>
<td>• Tracy Wilson</td>
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<td>• Deborah Moon</td>
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Audit Program Objectives

- Recover withholding tax in cases where employers misclassify employees as independent contractors
- Build relationships with taxpayers that allow the audit process to flow more smoothly and promote voluntary compliance
- Properly plan audits to ensure they are performed efficiently, meet quality standards and cause minimal disruption to taxpayers
- Gather and evaluate sufficient records to provide an adequate basis for determining tax due
- Apply appropriate law to support audit findings
- Maintain documentation consisting of a complete record of evidence examined to support audit findings
Tax Laws Cited in Audits

- R.S. 47:112 – imposes requirement on every employer making payments of wages to deduct and withhold from those wages tax as provided by withholding tables found in LAC 61:I:1501
- R.S. 47:113 – liability of employer upon failure to pay any amount withheld or required to be withheld
- R.S. 47:114 – return filing & payment requirements; penalty provisions for withholding
- R.S. 47:1601 & R.S. 47:1602 – interest and penalties
- R.S. 47:1508 – prohibits auditor from disclosing to employer the employees’ filing status
The Audit Process

- Field Audit Income Tax Division receives information from LWC detailing employers who have acquiesced in employee classification findings.

- Auditor reviews each misclassified employee’s individual income tax return to determine if wages are reported.

- Auditor creates audit schedules and assesses tax on wages not reported by employee; penalties and interest applied.

- Taxpayer sent notification of audit findings and given a review period.

- Auditor completes audit report, compiles audit file and submits case to the Audit Review & Appeals Division if the audit is not paid in full.
The Review Process

• Audit Reviewer examines the audit report; if in agreement with auditor’s findings a notice of proposed assessment (30-Day Letter) is sent to the taxpayer

• Taxpayer has option to formally protest the audit if they’re not in agreement with the findings

• Taxpayer has right to appeal to the Louisiana Board of Tax Appeals

• Formal assessment (60-day Letter) sent if audit not resolved within 30 days
  • Taxpayer has 60 days to pay or appeal the formal assessment to BTA; otherwise assessment becomes legally due and subject to immediate collection
  • Department may choose not to issue a formal assessment and may file suit, bypassing the BTA
Misclassification Audits Performed

- 15 leads from LWC
- 13 completed fieldwork
  - 10 closed
- 1 in progress
- 1 canceled

- Total audit findings $1,169,551
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