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FUBA issues

Florida United Businesses Association

OUR BUSINESS IS SMALL BUSINESS

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PAYROLL TAX CUT UPDATE

In last month's edition of ISSUES, we told you about a payroll tax cut for workers effective in January. For 2011, the employee tax rate for social security is 4.2%. This is a reduction of 2 points; employees normally pay a 6.2% social security tax through their paychecks.

Please note: Only the employee's share of social security tax has decreased. The employer's share for social security remains unchanged and is still 6.2%.

This tax reduction also applies to self-employed individuals, including independent contractors. They are entitled to a 2% reduction in payroll taxes, from 12.4% to 10.4%.

The other federal payroll taxes are staying the same for 2011. The social security wage base limit is $106,800 (this is the amount of wages an employee has to pay social security tax on per year). There will also be no change in the Medicare tax rate that is paid by both employers and employees. It remains at 1.45% each for employers and employees. There is no wage base limit for Medicare tax.

Employers should have already implemented the 4.2% employee social security tax rate. The deadline for doing so was January 31st. If you have issued January paychecks to your employees and withheld the old 6.2% rate of social security, you have until the end of March to make an offsetting adjustment to correct the withholding in your payroll checks.

OTHER TAX NEWS FOR SMALL BUSINESSES

Business owners, such as sole proprietors, who are taxed at the individual tax rate will benefit from an extension of reduced individual tax rates. The Tax Relief bill recently approved by Congress extends for 2 years (2011 and 2012) the current individual tax rates of 10%, 15%, 25%, 33% and 35%. Without this new law, all of the rates would have increased, with the top 2 rates increasing to 36% and 39.6%.

The Tax Relief bill also provides for 100% bonus depreciation. The 100% bonus depreciation rate applies to qualified property acquired after September 8, 2010 and before January 1, 2012 and placed into service before January 1, 2012 (or before January 2, 2013 for certain longer-lived and transportation property). Additionally, 50% bonus depreciation is available for qualified property placed in service in 2012. Certain corporations may be able to elect to accelerate any alternative minimum tax credit in lieu of bonus depreciation. For more details on depreciation and other tax issues, please see your local accountant or tax professional.

FLORIDA CORPORATIONS AND LLC'S: IT'S TIME TO FILE YOUR ANNUAL REPORT

If your business is a corporation (INC) or a limited liability company (LLC), you should have already received an email message from the Florida Department of State. This is not junk or spam! This is your official notice (and the only one you will get), reminding you to file your 2011 Annual Report with the Division of Corporations.

Annual reports have to be filed online at **www.sunbiz.org** by May 1st. A pre-printed annual report form is no longer available. All business entities must file their Annual Report to maintain "active" status (this requirement does not apply to sole proprietors). Payment can be made by credit card, check or sunbiz account.

If you do not file your Annual Report by May 1st, you will be charged a $400 late fee. There is no longer any provision for this fee to be waived, so please make sure to file this report now.

If you have any questions about your Annual Report, please call the FUBA offices at 800-262-4483 and ask for Karen, Lance or Erin.

CONTRACTORS: A GUIDE TO SALES TAX ON CONSTRUCTION

In Florida, the taxing of property improvements, installation and repairs depends on the exact nature of the transaction. The Florida Department of Revenue has published a Guide to help contractors:

- Determine if you need to pay sales and use tax when you buy parts and materials
- Determine if you need to charge tax to your customers.
- Understand what documentation you need to buy parts and materials tax-exempt.

The Guide covers real property, improvements to real property, fixtures, tangible personal property, fabricated cost and fabricated items. In this month's newsletter, we will explain the taxing of improvements to real property. In coming months, we will address tangible personal property, appliances and fixtures.

Real Property

Real property is the land, its improvements and fixtures. Transactions that involve items that are permanently installed into a structure, where they cannot be removed without destroying them, are classified as real property and are not subject to sales tax. Examples include carpentry, carpeting that is permanent, electrical systems, landscaping, masonry, and tile.

You should also consider the pricing arrangement in the contract when determining whether to charge sales tax, as explained below:

Types of Contracts

Under **lump sum, cost plus, fixed fee, guaranteed price, or time-and-materials real property contracts,** the contractor is the final consumer of materials and supplies and:

- Must pay sales tax to suppliers on all purchases, including those made for the contractors own use.
- Should not charge tax to the customer.

Retail sale plus installation contracts are contracts for improvements to real property where the contractor or sub lists and prices in the contract **all materials** to be used **before** the work begins. The contractor or sub also must agree to:

- Sell specifically described and listed materials and supplies at an agreed price or regular retail price, **and**
- Complete the work for either an additional agreed price or based on time used.

Since the sales of the materials is a separate transaction from the installation, the customer must assume title and risk the loss of the materials and supplies as delivered, rather than accepting only title to the completed worked. A contractor who performs retail sale plus installation contracts:

- Should buy the materials tax-exempt for resale.
- Should charge the customer tax on all materials.

Use of Materials

Tax is due on the use of goods by the contractor. The contractor is responsible for the tax if sales tax was not paid at the time of purchase.

Contractors may manufacture or fabricate a finished product from raw materials for use in a contract. Contractors owe tax on the manufactured cost of such products. For example, a cabinet maker/installer must pay sales tax on the manufactured cost of the cabinet. If a contractor fabricates a product at the job site, fabrication labor is exempt from tax. Only the cost of the materials is subject to tax.

Construction for Tax-Exempt Entities

The contractor cannot use an entity's tax exempt status to purchase materials used under a construction contract for the entity. Contractors owe tax on these purchases. However, the tax-exempt entity may buy the materials directly from the materials vendor and pay no tax when certain conditions are met. Effective January 2, 2011, governmental entities (except the federal government) must issue a Certificate of Entitlement to each vendor and contractor to purchase supplies and materials tax-exempt for use in public works contracts. If you do work for governmental entities, please make sure you understand these requirements; you cannot reverse or re-bill an otherwise taxable purchase after shipment or delivery.