

Missouri School Districts and Social Security
November 18, 2008

Government Entities and Their Roles

The **U.S. Social Security Administration (SSA)** administers and enforces Social Security laws and regulations.

The **U.S. Internal Revenue Service (IRS)** audits businesses, governments and nonprofits to ensure those entities correctly apply Social Security laws and regulations including what positions are covered.

The **State of Missouri Social Security Administrator (MSSA)** is the single point of contact for governments regarding Social Security. The Administrator works with SSA to obtain an understanding of how Social Security laws and regulations apply to Missouri governments and communicates that information to those entities. As needed, the Administrator works with SSA to obtain official determinations.

If MSSA believes SSA has misinterpreted or misapplied Social Security laws and regulations as they relate to school districts, MSSA works with SSA to resolve the issue. However, once SSA makes a determination, MSSA's primary responsibility is to communicate that determination to school districts and assist the districts in applying the determination.

Definitions

218 Agreement – A written agreement entered into between a school district and the State Social Security Administrator to define Social Security coverage for their employees.

Position – A job in a school district that has defined responsibilities is subject to oversight and regulation by the Missouri Department of Elementary and Secondary Education and is funded in whole or in part by district and state funds.

Absolute Coverage Group – School district positions that were not under a retirement system at the time Social Security coverage was extended to them via a 218 Agreement. Once a position is covered for Social Security as an absolute coverage position, the position will remain covered for Social Security, even if it is later covered under a retirement system.

Reclassified position – A position that originally existed and has had substantial and substantive modifications to its responsibilities.

PSRS – The Public School Retirement System, established under the provisions of Section 169, RSMo.

218 Agreements

- SS covers position. PSRS covers person.
- Positions subject to Social Security are set at the time the 218 Agreement was signed.
- If position was under PSRS when 218 Agreement was signed it was not covered by Social Security.
- Other existing positions were covered as part of an Absolute Coverage Group (ACG).
- If position later came under PSRS, it is still ACG.
- Positions created after 218 Agreement was signed need to be evaluated.

Why is There an Issue Now?

- IRS audit of a school district in 2004 led to an SSA determination that Missouri public schools had incorrectly stopped withholding and paying Social Security taxes for a number of school district positions. Per SSA, this was not a change in law or interpretation; these positions should have been covered continuously from the time the district signed its 218 agreement.

Implications of Non-Compliance

- Districts that do not withhold starting July 2009 may be subject to paying employer and employee share of Social Security.
- There may also be fines, penalties and interest.
- Employees hired under the presumption that they are in a position exempt from Social Security may be impacted.
- MSSA works with districts to help them ensure compliance.

When Do Districts Need to Act?

- Beginning July 1, 2009, the IRS will be specifically addressing this issue in employment tax audits of fiscal years beginning in 2009 and forward. School districts have until that date to comply.
- Districts may need to factor this in when signing contracts.

Criteria for Social Security Coverage

- SSA interpretation and application of Social Security laws and regulations.
- SSA may also look to state law and regulations in defining a position.
- Factors may include:
 - When 218 Agreement was signed.
 - Whether, by statute, position was then under PSRS.
 - For new/reclassified positions, how position would have been treated at time 218 Agreement was signed.

Position Evaluation Process

- SSA makes determinations on whether a position is subject to SS.
- MSSA facilitates the process for evaluating positions and seeking an SSA determination where indicated.
- MSSA is developing a Decision Matrix based on SSA criteria.
- MSSA is also developing a self-evaluation process (based on the Decision Matrix) for use by schools and associations.
- MSSA will involve DESE, PSRS and associations in developing the self-evaluation process.

Proposed Position Self-Evaluation Process

- Schools and/or associations identify positions that need evaluation.
- Schools and/or associations complete self-evaluation process and submit it and supporting documentation to MSSA. Signed by superintendent/executive director.
- MSSA acknowledges receipt of the submission.
- If self-evaluation process and supporting documentation indicate position is subject to SS, MSSA responds to any questions.
- If self-evaluation process and supporting documentation indicate position is exempt from SS, MSSA seeks SSA determination.

- MSSA reports results of an SSA determination to entities that made submission and posts to web site.

MSSA Actions

- Continue to work on process for defining and evaluating positions.
- Continue to work with SSA to obtain determinations as and when needed.
- Continue to update web site with most current information.
- Identify the process for an appeal of an SSA determination.
- Communicate with stakeholders.

Communicating With School Districts

- For generally applicable information refer to OA web site (<http://oa.mo.gov/acct/ssa.htm>) and/or have lead entity prepare it with input from all.
- For entity specific communications, MSSA would appreciate opportunity to review and comment in advance.
- In any event, MSSA would appreciate being informed of any communications to districts and members in advance.