South Dakota
Department of Revenue
445 East Capitol Avenue
Pierre, South Dakota 57501

Professional Employer Organization Request for Approval

October 2012

A Professional Employer Organization means a firm which:

A. Enters into a contractual agreement with a client company to create a co-employment relationship for the provision of payroll, benefits, and other human resources functions;

B. Covers at least seventy-five percent of the client company's full-time or full-time equivalent employees domiciled in South Dakota; and

C. Maintains separate books and records of account for each client company.

The gross receipts of a professional employer organization are subject to sales tax. However, a professional employer organization may deduct from its taxable gross receipts its actual disbursements, including appropriate reserves for the wages, salaries, payroll taxes, payroll deductions, workers' compensation costs, insurance premiums, welfare benefits, retirement benefits, and other employee benefits of its co-employees.

Each professional employer organization doing business in South Dakota must be approved by the Department of Revenue as a professional employer organization as defined by South Dakota state law.

Any organization not approved as a professional employer organization is required to pay sales tax on all fees charged between the organization and the client with no deduction for actual disbursements, including appropriate reserves, for the wages, salaries, payroll taxes, payroll deductions, workers' compensation costs, insurance premiums, welfare benefits, retirement benefits, and other employee benefits of its co-employees.

To apply for approval please send the information listed below to the Department at:

South Dakota Department of Revenue
Business Tax Division
445 East Capitol Ave
Pierre, SD 57501

Email: bustax@state.sd.us
Fax: 605-773-6729

Professional Employer Organization Information

1. Applicant's name: _____
2. Address: _____
3. Contact person and phone number: _____
4. Contact person email address: _____

Client Information (please include information for each client with employees in South Dakota)

5. Client's Name: _____
6. Address: _____
7. The number of client's full-time employees located in SD: _____
8. The number of client's full-time employees in SD covered by the contract: _____
9. Please indicate the section of your contract that covers items 1-6 on the back of this form.
10. Provide a copy of the signed contract between the organization and the client. (A sample contract is not acceptable.)

The following six items must be stated in your contract. Please indicate the section in your contract that covers each item. Send a copy of your contract with this request for approval.

1. The professional employer organization assumes the responsibilities listed in this subdivision, including the payment of wages, salaries, payroll taxes, payroll deductions, workers compensation costs, insurance premiums, welfare benefits, and retirement benefits, and preparing and filing necessary tax returns and other documents as required by state or federal law.
   Contract Section:_____
   Office Use:_____

2. The client company must be the employer to any existing employees prior to the contractual relationship with the professional employment organization.
   Contract Section:_____
   Office Use:_____

3. The client company retains primary control over the hiring, firing, wage rates, salary increases, training, and directing the day-to-day activities of the co-employees.
   Contract Section:_____
   Office Use:_____

4. If the contractual relationship between the professional employer organization and the client company is terminated, then the co-employees' employment with the professional employer organization is also terminated.
   Contract Section:_____
   Office Use:_____

5. If a co-employee leaves the employment of the client company, that co-employee's employment is terminated with the professional employer organization.
   Contract Section: _____
   Office Use:_____

6. The professional employment organization does not manage or direct the operation of the client company's business.
   Contract Section: _____
   Office Use:_____
   Date:_____

Any contract is subject to review and if it does not meet the criteria as a Professional Employer Organization, you may have additional tax liabilities to the state.

Applicable Laws and Administrative Regulations:
SDCL 10-45-96, 10-45-97, and 10-45-98.
ARSD 64:06:02:89, 64:06:02:89.01

Talk to Us

If you have a tax problem or question, call the South Dakota Department of Revenue toll-free at **1-800-829-9188.** Visit us on the web at **http://dor.sd.gov**, email us at **bustax@state.sd.us** or write us:

South Dakota
Department of Revenue
445 East Capitol Ave
Pierre, SD 57501-3100

Information found in this document rescinds and replaces all previous, written information on this subject. It does not cover every aspect of the tax, nor does it alter or supersede any state statute or administrative regulation. All readers and users of this publication are responsible for keeping informed about changes in tax laws and regulations by reading the Department of Revenue newsletters, press releases, Tax Facts, and other documents published by the department.