

NOTICE:

This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes section 41-1033 for a review of the statement.

(This notice is required by A.R.S. § 41-1091(B).)

NOTICE OF SUBSTANTIVE POLICY STATEMENT

DEPARTMENT OF ECONOMIC SECURITY

1. **Title of the substantive policy statement and the substantive policy statement number by which the policy statement is referenced:**

Unemployment Insurance Tax: Voluntary Election of Coverage. The substantive policy statement number is 17P-C068.

2. **Date the substantive policy statement was issued and the effective date of the policy statement if different from the issuance date:**

The substantive policy statement was issued and will become effective upon filing with the Office of the Secretary of State.

3. **Summary of the contents of the substantive policy statement:**

The substantive policy statement describes the Department's determination regarding conditions under which the Department will permit employers to voluntarily elect to be covered by the Unemployment Insurance Program.

4. **Federal or state constitutional provision; federal or state statute, administrative rule, or regulation; or final court judgment that underlies the substantive policy statement:**

A.R.S. § § 23-615 (6) (d) (i) - (vi), 23-617, and 23-725 (D) and (E)

Internal Revenue Service, Employer's Supplemental Tax Guide, Publication 15-A (2009)

5. **Statement as to whether the substantive policy statement is a new statement or a revision:**

This is a new substantive policy statement.

6. **Name, address and telephone number of the person to whom questions and comments about the substantive policy statement may be directed:**

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Policy Statement
Number: 17P-C068
Unemployment Insurance Tax
Date Issued: May 19, 2010

SUBJECT

Voluntary election of coverage.

AUTHORITY

Arizona Revised Statute (A.R.S.) § 23-725 (D) allows “[a]n employing unit, not otherwise subject to this chapter, which files with the department its written election to become an employer subject thereto for not less than two calendar years, shall with the written approval of such election by the department, become an employer subject thereto to the same extent as all other employers...”

A.R.S. § 23-725 (E) permits “[a]ny employing unit for which services that do not constitute employment as defined in this chapter are performed, may file with the department a written election that all such services, with respect to which payments are not required under an employment security law of any other state or of the federal government, and which are performed by individuals in its employ in one or more distinct establishments or places of business, shall be deemed to constitute employment by an employer for all the purposes of this chapter for not less than two calendar years. Upon the written approval of such election by the department, such services shall be deemed to constitute employment subject to this chapter from and after the date stated in the approval.” Emphasis added.

Both A.R.S. § 23-725 (D) and (E) state that the employer may file with the Department a written notice to terminate the election after two (2) calendar years and the employer’s request is made within the following period: January 1 through March 31.

Employment is also addressed at A.R.S. § 23-617 which defines exempt employment as employment which is “not considered in determining whether an employing unit constitutes an ‘employer’ under this chapter” and lists twenty-three (23) types of employment. Emphasis added. Therefore, the Department will permit an employer to elect voluntary coverage of its workers engaged in the enumerated types of employment.

However, the Department will not permit an employer to voluntarily elect coverage for workers who engage in the services listed in A.R.S. § 23-615 (6) (d) (i) through (vi). The statute explicitly states that “[f]or purposes of this paragraph, the term ‘employment’ does not apply to service performed” by the following individuals; those employed by a church, a minister, a government worker, a rehabilitation worker, an unemployment work-relief or work-training worker, and an inmate. Emphasis added.

DISCUSSION AND CONCLUSION

An employing unit not subject to Unemployment Insurance Taxes may voluntarily elect to become an employing unit subject to UI Tax and voluntarily elect coverage for its workers performing “services that do not constitute employment” pursuant to A.R.S. § 23-725 (D) and (E), however the Department may deny an employing unit’s request for coverage of services if the employing unit does not agree to extend coverage to all of its employees engaged in performing similar services for the employing unit. An Arizona Attorney General opinion dated June 19, 1956 unequivocally stated that there is no provision in the statute for partial coverage and, consequently, coverage must be for all employees “regardless of the number of establishments wherein those services might be performed.” Furthermore, the commentary for the Draft Legislation of 1950 permits election of coverage of some types of services and excludes other types of services provided an employer extends coverage to all individuals performing the specified type of service. In addition, the employer must agree to a start date of January 1 of the year in which the written request was made to the Department or the date the workers were first employed, whichever is later.

REFERENCES

A.R.S. §§ 23-615 (6) (d) (i) through (vi), A.R.S. § 23-617, and 23-725 (D) and (E).
Internal Revenue Service, Employer’s Supplemental Tax Guide, Publication 15-A (2009).

AGENCY RECEIPT

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