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# County Officials E-News

January 2013, Vol 40

*Promoting better county government through direct assistance to county officials and their associations.*



## County Spotlight:

### Smith County

Population: 19,201

County Seat: Carthage

CTAS Field Consultant:

**Ben Rodgers**

Smith County was the site of a large saltpeter mine. Piper Cave, located near Monoville, contains the poorly-preserved remnants of dozens of saltpeter leaching vats. Most saltpeter mining in Middle Tennessee occurred during the War of 1812 and the Civil War, but the exact date of this operation is unclear.

For more information, visit:

[Smith County - Wikipedia](#)

## Common Issues Arising During An IRS Audit

by Wally Reimold, Federal, State, & Local Governments Revenue Agent,  
Internal Revenue Service

It's getting to be the time of year when everyone files their Forms W-2 and 1099, so it's also a good time to discuss common issues that I see when I conducting audits of municipal governments. Typically the issues involve either the taxability of fringe benefits, or the misclassification of workers. Regardless of the type of municipal entity, the issues remain constant.

Easily the biggest issue I encounter involves not including the value of the personal use of a government vehicle on an employee's Form W-2. If an employer provides a vehicle that is used by an employee exclusively for business purposes and substantiation requirements are met, there are no tax consequences or reporting required. The use is treated as a working condition fringe benefit. Business use does not include commuting (except when the vehicle is classified as a Qualified Nonpersonal Use Vehicle). Employees should maintain records to substantiate that all vehicle use was for business. *Reg. § 1.132-6(e)(2)*

If an employer-provided vehicle is used for both business and personal purposes, substantiated business use is not taxable to the employee. Personal use, including most commuting, is taxable to the employee as wages. The employer can choose to include all use as wages; in this case, the employee may pay the employer for personal use rather than having it treated as wages. *Reg. § 1.61-21(c)*

A thorough discussion of personal use of vehicles can be found in the IRS Taxable Fringe Benefits Guide starting on page 51. This Guide is located at [http://www.irs.gov/pub/irs-tege/fringe\\_benefit\\_fslg.pdf](http://www.irs.gov/pub/irs-tege/fringe_benefit_fslg.pdf).

Another prevalent issue is the taxability of gift cards. Many governmental entities are now giving employees gift cards around the holidays. Traditionally, many employers provide turkeys or similar items during the holiday season, and this is generally excludable from wages as a de minimis fringe benefit. In recent years, the gift card has been a popular alternative to a holiday turkey or a ham because





### *Event Calendar*

January 8 - Legislative Session Began

February 7, 8, 21, & 22 - How to Be Your Boss's Favorite

March 12 & 13 - County Government Day

March 14, 15, 19, & 22 - Emotional Intelligence in the Workplace

[CTAS Event Calendar](#)

### **Reminder:**

**Statements of Disclosure of Interests Due by Jan 31**

For more information, please visit the [Tennessee Ethics Commission website](#).

### **Important Info from MTAS:**

#### **Online Data Backup**

by Justin O'Hara, MTAS IT Consultant

This publication describes how city data may be lost or compromised and practical ways to protect data with a backup. The principles and ideas can may also be applicable for county governments.

Download the publication:

[Color](#) | [Black & White](#)

it provides employees with more choices and greater convenience. Some employers believe that gift cards are not taxable and qualify as excludable from income as a de minimis fringe benefit because they meet the example of "traditional birthday or holiday gifts of low fair market value", or because they are non-negotiable (restricted to only certain items; the redemption time is limited; and any unused portion is forfeited).

However, gift certificates that are redeemable for a range of merchandise, even of nominal value, are considered wages and are subject to income and employment taxes (even when the card restricts the items purchased, the time to use the coupon, and any unused portion is forfeited) because cash and cash equivalents do not meet the de minimis fringe benefit requirements. An excellent article on this topic can be found in the March 2005 FSLG Newsletter, on page 3, at [http://www.irs.gov/pub/irs-tege/p\\_4090\\_fed\\_0305.pdf](http://www.irs.gov/pub/irs-tege/p_4090_fed_0305.pdf).

Another common issue is the misclassification of elected and appointed officials as independent contractors instead of as employees. Under Internal Revenue Code section 3401(c), officers, employees, or elected officials of the United States or a state or local government are specifically identified as employees for income tax withholding purposes. There is a limited exception from income tax withholding for fees paid to public officials such as notaries and amounts paid to precinct workers.

Holders of public office are generally considered employees of government and are not subject to self-employment tax. This is because performing the functions of a public office is not considered a trade or business. We find this explanation in Internal Revenue Code 1402(c) and Regulation 1.1402(c)-2(b). Examples of public officials are: mayor, legislator or elected representative, county commissioner, judge/justice of the peace, county or city attorney, marshal, sheriff, constable, registrar of deeds, tax collector or assessor, road commissioner, and board members.

Because Board members are considered public officials, they will usually meet the criteria for being an employee. These officials act with a certain amount of independence under the law, but they are also responsible to other officials, as specified in statutes and ordinances (e.g. the TN Code Annotated). An appointed board member is responsible to the public and the public or a superior official has the power to remove the appointed board member. A public official does not have the freedom from supervision characteristic of an independent contractor.

Elected and appointed officials almost always will be classified as employees, subject to FICA and income tax withholding. More information on this topic can be found in Chapter 4, page 8 of Publication 963 "Federal-State Reference Guide". This Guide is located at <http://www.irs.gov/pub/irs-pdf/p963.pdf>.

These are some of the issues that I am encountering. I have provided you with links to the Taxable Fringe Benefits Guide, the Federal-State Reference Guide, and our FSLG Newsletter archive. These are excellent resources to use if you have any questions. If you have any questions I can be reached at (615) 250-6051 or [Wallace.I.reimold@irs.gov](mailto:Wallace.I.reimold@irs.gov).

UT County Technical Assistance Service  
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