

STATE OF NEW MEXICO
THIRD JUDICIAL DISTRICT ATTORNEY
ANNUAL FINANCIAL REPORT
FOR THE FISCAL YEAR ENDED
JUNE 30, 2008

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STATE OF NEW MEXICO
THIRD JUDICIAL DISTRICT ATTORNEY
CURRENT YEAR SCHEDULE OF FINDINGS
For the Year-Ended June 30, 2008

Section III - Reportable Findings and Questioned Costs – Major Federal Awards

Current Year Reportable Findings and Questioned Costs:

Finding 2008-01 Employees Being Paid As Personal Service Contractors

Condition

The District Attorney employed 24 individuals on an hourly basis to destroy closed cases on the premises and reporting the compensation as personal services contractors.

Criteria

Personal services contractors are in substance employees. The District Attorney is liable for the employees' share of the FICA and employer FICA match on the contract payments made to these individuals.

Effect

If an employee is classified as an independent contractor and there is no reasonable basis for doing so, there is a liability for employment taxes for that worker in accordance with the Internal Revenue Code Section 3509.

Cause

The District Attorney has the right to control what the worker does and how the worker does his or her job. The business aspect of the worker's job controlled by the District Attorney was how the worker is paid whether expenses are reimbursed, the tools and supplies provided. All of these requirements were met for these personal service contractors. They should have been considered employees.

Recommendation

The District Attorney should place these individuals on the payroll as employees and pay the required employment tax. An alternative would be to lease these individuals from an employee leasing firm to perform the services required. The leasing company would be responsible for the employment tax.

Response

This recommendation will be implemented.