

NOTICE 16-03

**WITHHOLDING ON PAYMENTS MADE TO PERSONAL CARE SERVICE PROVIDERS
BY SELF-DIRECTING PARTICIPANTS AUTHORIZED FOR SERVICES**

INFORMATION FOR INDIVIDUALS AND FINANCIAL MANAGEMENT SERVICE PROVIDERS

(APRIL 11, 2016)

Advice has been requested regarding Kansas withholding on payments made to personal care service providers. This Notice addresses that topic.

The Kansas Department for Aging and Disability Services has established Policy and published information that defines Personal Care Services (PCS) and specific limitations that apply. The General policy statement provides, in part:

I. General

A. PCS is designed to assist elderly and disabled participants in their home and community settings that comply with the HCBS Settings Final Rule. PCS focuses on assistance with Activities of Daily Living (ADLS) such as bathing, grooming, toileting, transferring, and eating and Instrumental Activities of Daily Living (IADL) such as shopping, laundry, housekeeping, and meal preparation.

1. PCS services are authorized, provided and reimbursed based on the assessed needs of the participant. The participant's needs are assessed by the selected Managed Care Organization (MCO) and identified on the Integrated Service Plan (ISP). The ISP must document the participant's authorized service in hours/units and the participant's selected provider.

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B. Participants authorized for PCS services have the option to agency-direct or self-direct their authorized services as provided for in each waiver.

1. Agency-directed and self-directing participants employing PCS workers shall comply with all applicable state and federal employment laws;

2. If available, a participant, a parent, or legal guardian may elect to self-direct PCS.
 - a. Self-directing participants employing PCS workers are subject to the same quality assurance standards as other PCS providers including, but not limited to, completion of the tasks identified on the ISP; and
 - b. For self-direct PCS for the TA Program, the HCBS TA Waiver PCS Training Checklist must be completed prior to providing PCS.
3. If a participant or legal guardian no longer wants to self-direct his or her PCS, the participant or legal guardian shall have the option to transition to agency-directed PCS without penalty. Conversely, if a participant or legal guardian no longer wants agency-directed PCS and has not been determined unable to self-direct his or her services, the participant or legal guardian shall have the option to transition to self-directed PCS, authorized in accordance with this policy.

The Policy established Kansas Department for Aging and Disability Services also defines certain terms. The term “Self-direction” is defined as:

Self-direction – participants exercise employer authority over some or all of the home and community-based services they need to live in their community and accept the responsibility for taking a direct role in managing those services. Within the participant-directed model and Kansas state law, participants employ direct workers and “make decisions about and direct the provision of services which include, but not limited to selecting, training, managing, paying and dismissing of a direct service worker.” (K.S.A. 39-7,100)

A self-directing participant who employs one or more personal care service providers is considered to be an employer for purposes of Kansas income tax withholding. As a result, the participant is required to register with the Kansas Department of Revenue, withhold tax from the wages they pay their employee(s), and remit the tax to the Department of Revenue.

Instead of dealing with all of the requirements typically imposed on an employer, many self-directing participants choose to use a financial management service (FMS) provider to handle these duties, including the responsibilities associated with Kansas withholding tax. On behalf of their client the FMS provider is required to register with the Kansas Department of Revenue, withhold tax from the wages they pay their employee(s), and remit the tax to the Department of Revenue.

Details of the withholding tax process are provided in the Department’s publication KW-100 Kansas Withholding Tax Booklet which is available through the Department’s website at: <http://www.ksrevenue.org/pdf/kw1002015.pdf#search=KW-100>. An outline of the process, with important contact information, is provided below.

Individual Account Registration

- In order to register business tax accounts or submit payments and file returns through online, you must have a User ID on the Kansas Department of Revenue (KDOR) Customer Service Center. To do this, go to www.ksrevenue.org and click the “Register Now” link on the top right corner of the page and follow the prompts to create a profile. If you already have a user ID, simply click the “Log In” button and provide your credentials.
- Once you have a valid user ID and have logged into the Customer Service Center, you will be presented with the main menu on the “Home” page. To register a business tax account, click the “New Tax Registration” button and follow the prompts. Information collected in the online registration is the same as the paper process, but processing generally occurs much faster.

Making Withholding Payments

All Withholding tax returns must be submitted electronically. Because a Withholding payment cannot be remitted without an associated KW-5 return, all Withholding payments must be submitted electronically. There are two options for electronically filing and paying Withholding tax:

- ACH Credit – Using this payment method, the sender remits payment to the KDOR through the sender’s bank, effectively “pushing” a payment and related information directly to the Department. This is the national standard “bulk payment” option. The KDOR follows the National Automated Clearing House Association (NACHA) guidelines for electronic payment processing. KDOR will provide addendum record formats needed by the sender’s bank upon request. Contact the Electronic Services Technical Help Desk at 785-296-6993 for more information about submitting payment via ACH Credit.
- KDOR Customer Service Center – KW-5 returns with payment may be individually submitted through the KDOR Customer Service Center. Using the same user ID established under the “Individual Account Registration” section, a user can associate individual tax accounts to their ID, specify banking information for each tax account, and choose when an account is to be paid. KDOR then “pulls” funds from the identified account using the information provided.

A user may associate multiple tax accounts to an individual user ID. To associate an account, the user must have the business Employer Identification Number (EIN) and account Access Code. An access code can be obtained from the Electronic Services Technical Help Desk at 785-296-6993. In cases where many accounts need to be associated with a single user ID, users are encouraged to contact the Help Desk for assistance.

End of Year Reports and Returns

- Annual Withholding Tax Return (KW-3) – All Withholding accounts have a KW-3 return due the last day of February following the tax year. Filers have the option of using the KDOR Customer Service Center to individually send returns on account by following the menu options within the specific tax account. If you are working with a larger number of Withholding accounts, you are encouraged to contact the Electronic Services Technical Help Desk at 785-296-6993 to have your account configured to accept bulk KW-3 files. You then have the option to upload KW-3 data for multiple accounts in a single file.
- W-2 Wage Reports – Filers also have the option of submitting W-2 information in bulk through the Department’s Customer Service Center. KDOR follows the Federal EFW2 format outlined by the Social Security Administration. This file, with the addition of the State record, is the same file that is submitted to the Social Security Administration. Similar to the KW-3 bulk filing process, W-2s can be uploaded once the user account is configured to handle bulk files. Contact the Electronic Services Technical Help Desk at 785-296-6993 for assistance.

Information about electronically filing bulk KW-3 and W-2 files is available at www.ksrevenue.org/eservw2.html.

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.org. If you have questions about this Notice, please contact:

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Kansas Department of Revenue
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