December 29, 2011

Iowa State Department of Health
Cosmetology Board
321 E. 12th Street
Lucas State Office Building
Des Moines, IA 50319

Attention: Susan Reynolds

In July of 2011, the Federal Government through the Department of Education implemented legislation that impacted schools of higher education. Private For-Profit schools were primarily affected by this law. This piece of legislation was later dubbed “Gainful Employment” and included consumer information disclosure mandates to protect prospective students and their parents. Much of this disclosure information, including tuition, loan calculations, graduation rates and more can be found on every school’s website. Included in this massive new legislation; schools had to provide proof to the FDOE that they are approved by their state regulatory agency to provide “postsecondary education”.

Typically, this approval is done for all other colleges through the Iowa College Student Aid Commission. However, Iowa Cosmetology Schools are exempt from registering with the ICSAC as a postsecondary educational institution as per (261B.11 - Exceptions)

subsection 9 “Postsecondary educational institutions licensed by the state to conduct business in the state” and;

subsection 11 “Postsecondary educational institutions offering programs limited to non-degree specialty vocational training programs.”
Therefore, cosmetology schools are “exempt” from registering with the ICSAC for the approval to provide post-secondary education. ICSAC directed us to our licensing agency, which follows the code.

When Iowa Cosmetology Schools approached Professional Licensure at the Department of Health, requesting additional wording on our license (licensed as a post-secondary education institution of Cosmetology Arts and Sciences) or simply a letter stating that Iowa Cosmetology Schools were licensed in the state to provide postsecondary education, we were denied. The response was that “this was a financial aid issue and IDOH would not get involved”.

Reasons we believe IDOH should be involved:
• This is not just a financial aid issue. The Federal Government REQUIREs that schools provide proof that we are approved/regulated as a provider of post-secondary education. This is specifically for the protection of students enrolling in post-secondary schools.

• Iowa Administrative Code (157.3)1 states “an applicant who has graduated from high school or its equivalent shall be issued a license to practice any of the cosmetology arts and sciences by the department when the applicant satisfies all of the following.” (and goes on to state they must submit a diploma issued by a licensed school of cosmetology arts and science.) Iowa Cosmetology Schools, by virtue of statute, are “post-secondary” if the student has to provide proof of high school graduation or equivalence to be a graduate.

• Additionally, the student attests on their Iowa Cosmetology licensure application that he/she is a high school graduate or equivalent. This is done, of course, because it is required in code.

• Iowa Cosmetology Schools are required to have a separate and special Cosmetology School License issued by the IDOH-Professional Licensure. Currently the FDOE has language protecting schools when they are not recognized officially and legislative action is under way to comply. Our Association, however, feels that we must be proactive and work with the state agencies to comply fully and protect all schools (those with exemption letters and those without). The impact is quite simple; if you are not compliant with “Gainful Employment” you risk being dropped by an accrediting agency or put on probation by FDOE or both, thus impacting hundreds of Iowa citizens attending schools in Iowa every day.

Iowa Cosmetology Schools feel the need for something in writing attesting that we are approved to offer postsecondary educational programs by the Iowa Department of Health. The IDOH has justification in statute that we do indeed require that students be “post-secondary”. Our concerns are that as the winds of legislation often turn; FDOE next time around might not see any early exemption letters as enough to qualify. Our neighboring states such as South Dakota have been very helpful to their in-state schools in meeting this mandate. We feel it could require nothing more than a simple letter to Iowa Cosmetology Schools attesting:

“as per IAC 157.3, COLLEGE NAME is licensed/approved by the Iowa Department of Health/Professional Licensure as a provider of postsecondary education” or

“as per IAC 157.3, COLLEGE NAME is licensed/approved by the Iowa Department of Health/Professional Licensure as a provider of postsecondary education of Cosmetology Arts and Sciences”

As it stands today, we also have several schools that do not have the 1996 letter from the Secretary of State giving exemptions. Our association believes that these schools, too, should be protected. There is not a better way to accomplish this than to get the language corrected on the actual license or have a letter issued stating same.

Our Association would like very much to discuss either changes to code or administrative rule to cover this federal requirement. We have not contacted legal counsel to discuss this, but rather feel the appropriate avenue at this time is to confer with the AAG from IDOH and Carolyn Small from ICSAC to determine what department wants to have jurisdiction in this case. The ICSA feels it should be IDOH. We want to discuss this because it seems implausible that no agency at this time is willing or feels able
to complete what seems like a simple step that many other state agencies have seen fit to complete rather expeditiously.

Some of our members will be attending the board meeting on January 10th and others could make the meeting if that was an appropriate time to get together and discuss this issue. We look forward to working together and getting this issue resolved.

Thank you,

[Signature]

Justin Latham, President
Iowa Cosmetology Schools Association
Barber and Cosmetology Arts and Sciences Licensees

Are you an Employee or an Independent Contractor? (Self-Employed)

To help you determine if you are an employee, three classifications have been identified by the Internal Revenue Service that indicate whether sufficient "control" is present to establish an employer-employee relationship. Behavioral control, financial control, and relationship to the parties were the categories developed.

Behavioral Control
Facts that show whether the business has a right to direct and control how the worker does the task for which the worker is hired include the type and degree of —

Instructions the Business Gives the Worker
An employee is generally subject to the business's instructions about when, where, and how to work. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved.

Training the Business Gives the Worker
An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

Financial Control
Facts that show whether the business has a right to control the business aspects of the worker's job include:

Extent to Which the Worker has Unreimbursed Business Expenses
Independent contractors are more likely to have unreimbursed expenses than employees. Fixed ongoing costs that are incurred regardless of whether work is currently being performed are especially important. However, employees may also incur unreimbursed expenses in connection with the services they perform for their business.

Extent of the Worker's Investment
An independent contractor often has a significant investment in the facilities he or she uses in performing services for someone else. However, a significant investment is not required.

Extent to Which the Worker Makes Services Available to the Relevant Market

How the Business Pays the Worker
An employee is generally paid by the hour, week, or month. An independent contractor is usually paid by the job. However, it is common in some professions, such as law, to pay independent contractors hourly.

Extent to Which the Worker Can Realize a Profit or Incur a Loss
An independent contractor can make a profit or loss.

Types of Relationship
Facts that show the parties' type of relationship include:

- Written contracts describing the relationship the parties intended to create.
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- The permanency of the relationship. Engaging a worker with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, is generally considered evidence that your intent is to create an employer-employee relationship.
- The extent to which services performed by the worker are a key aspect of the regular business of the business of the company. If a worker provides services that are a key aspect of your regular business activity, it is more likely that you will have the right to direct and control his or her activities. For example, if a law firm hires an attorney, it is likely that it will present the attorney's work as its own and will have the right to control or direct that work. This indicates an employer-employee relationship.
For Internal Revenue Service help or federal tax information, contact the IRS at 800-829-1040. If you want the IRS to determine whether a worker is an employee, file Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding, with the IRS.

Example 1

Paul Pick, a barber, signed a lease agreement with Larry Lord, the owner of a barber shop, to use a chair in Larry’s shop. Larry bears all the shop expenses, including rent, utilities, advertising, linens, and other supplies.

The agreement provides that 70 percent of the receipts from Paul’s shop go to him and 30 percent go to Larry. All receipts are put in Larry’s cash register. At the end of the week, he pays Paul the agreed percentage of the receipts.

Shop hours are displayed on the shop door. Paul is expected to comply with them. He must take customers in turn, maintain clean premises, use clean towels and sterile equipment, and keep a clean personal appearance. Although Larry does not supervise Paul, Larry can dismiss him for acting in a manner that would cause the loss of patrons, or for any other reason.

Larry does not direct or control Paul in the actual performance of his services, but he has the right to do so and to discharge him. Larry’s income depends on a percentage of Paul’s receipts. Thus, Larry retains the right to direct and control Paul to protect his investment and to be assured a sufficient profit from the shop. Paul has no investment in the shop, assumes no liability for its operation, and furnishes nothing except his personal services. Paul is an employee of Larry.

Example 2

Cosmetology Salons, Inc., leases space for beauty shops in department stores. Each department store pays the wages of the salon manager and operators on the basis of payrolls prepared by the manager. The department stores receive a fixed percentage of salon receipts as rent. Although a department store can request removing an operator or manager from the particular store, Cosmetology Salons, Inc., controls the hiring, training, transfer, and dismissal of all cosmetology salon personnel. The managers and operators employed in the shop are employees of Cosmetology Salons, Inc.

Example 3

Charlie Blue, the owner of a barber shop, and Sally Gold have an agreement under which Sally, a professional manicurist, furnishes manicuring services to shop patrons during business hours.

According to the agreement, Sally regulates her own hours, furnishes her own equipment and supplies, and keeps the proceeds from her work. She does not use the shop cash register nor does she report her earnings to Charlie. She does not have to perform her services personally but can hire a substitute. Charlie cannot direct the way she performs her services. Either party to the agreement can end the arrangement at any time.

Although Charlie has the right to dismiss her by ending the agreement, and although he furnishes her a place to work, he does not have the right to exercise over her work the degree of direction and control necessary to establish an employer-employee relationship. Therefore, Sally is self-employed.

If You Are an Employee...

Your employer will withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay federal and state unemployment taxes on wages paid to you. This is true on commission, tips, and salary income and if you are a family member of the employer. The employer will also collect and remit sales tax from the services you perform.

If You Are an Independent Contractor (Self Employed)...

If you are self-employed, you are responsible for making estimate payments of state and federal income taxes, and paying Social Security and Medicare taxes. Independent contractors must have a sales tax permit and also collect Iowa sales tax on sales of tangible personal property and taxable services.

If You Are an Employer...

If you have employees, you need to be registered with the IRS and with Iowa as a withholding agent.

First register with the Internal Revenue Service to obtain a Federal Employer Identification Number (FEIN). There is no fee for registering.

Then register online with Iowa -- Iowa Business Tax Registration. There is no fee for registering. Please allow four to six weeks to process your application.
Basic Returns and Schedules to be Filed:

1. 1040 / IA 1040. Used for filing individual income tax.
   - 1040ES. Used for remitting federal estimated income tax, Social Security, and Medicare. It is mailed to IRS with the taxes due on a quarterly basis.
   - IA 1040ES. Used for remitting Iowa estimated income tax. It is mailed to the Iowa Department of Revenue, with the tax due on a quarterly basis.
   - Schedule SE. Used for figuring Self Employment Tax (Social Security and Medicare). It is attached to and filed with your federal 1040.
   - Schedule C. Used to report your profit or loss from sole proprietorship. It is attached to and filed with your federal 1040 and your Iowa IA 1040. (This schedule is used to report the profit or loss for sole proprietors only. Partnerships and corporations must file different schedules.)

2. 1120 / IA1120. Used for filing corporate income tax.
   - 1120ES. Used for remitting federal estimated corporate income tax.
   - IA 1120ES. Used for remitting Iowa estimated corporate income tax.

3. 1065 / IA 1065. Used for filing partnership or limited liability company income tax.
   - 1065. Used for remitting federal partnership or limited liability company income tax.
   - IA 1065. Used for remitting Iowa partnership or limited liability company income tax.

4. Iowa sales tax return.
   Businesses that are registered to collect Iowa sales or retailer’s use tax are using eFile & Pay to electronically file their return information. Payment of the tax due may also be made electronically through eFile & Pay, although payment by paper check with a payment voucher is an option for most taxpayers. eFile & Pay is available online and by touchtone telephone. Paper forms are not mailed.

5. Iowa withholding return if you are an employer.
   Electronic filing and payment of Iowa withholding is through eFile & Pay, either online or by touchtone telephone. Both are safe, secure systems. Paper deposits and returns are not provided. However, you will receive paper vouchers to use if you choose to pay with check or money order, unless you are required to pay electronically.

Reporting Income From Tips
All tips are taxable income and subject to income tax. This includes tips received directly by you, through charge cards, and through tip splitting arrangements. If you are an employee and in any month your tips total $20 or more, those tips are subject to the withholding of federal and state income tax, Social Security tax, and Medicare tax by your employer. Consequently, you must report those tips to your employer by the 10th of the next month. If you are self-employed, then any tips are a part of your gross receipts that you report on your federal Schedule C. For further information on tips, call the Internal Revenue Service at 800-829-3676 and ask for Publication 531, "Reporting Income From Tips."

What is Subject to Iowa Sales Tax?
Barber and beautician services are subject to Iowa sales tax and to local option sales tax if the service occurs in a local option jurisdiction.

You must register for a sales tax permit and remit the tax on your sales of tangible personal property and services.

A sales tax permit does not automatically give the permit holder absolute exemption from sales tax on purchases. Supplies may be purchased exempt from tax if they are for resale; the permit holder completes an exemption certificate to give to the supplier.

Often times a business will remove items from inventory for its own use, not to resell to a customer. If the inventory was purchased tax free, the business owes sales tax on what it uses in the course of business. The sales tax is reported on the "goods consumed" line on the sales tax return.

For example, the business must pay sales tax on the shampoo used while shampooing and styling a customer’s hair. Shampoo that is sold by the bottle to a customer is purchased tax free from a supplier by the business. The business charges the customer sales tax on the selling price.

Following are items that are taxable...
when used in the performance of barber and cosmetology services and when used to maintain the business. This list is not intended to be complete. Questions about the taxability of an item should be directed to Taxpayer Services or call (515) 281-3114 or 800-367-3388 (Iowa, Rock Island, Moline, Omaha).
Local Option Sales Tax

Most communities have a local option sales tax in addition to the state sales tax. The tax is not statewide and the local option tax only applies in those jurisdictions that have imposed it.

Local option sales tax applies to the same goods and services that are subject to sales tax. Products, services, or organizations that are exempt from sales tax are usually exempt from local option tax.

The local option tax should be collected if the product is delivered or the service is performed in a local option tax jurisdiction. The same services or supplies that a barber or hairdresser provides that are subject to sales tax are also subject to local option sales tax if the service or product is performed or delivered in a local option tax jurisdiction.

There is no special application or permit number for local option tax. It is paid with any sales tax that is due on the quarterly sales tax return. Monthly sales tax filers should accrue or save the local option tax they have collected through the quarter and pay the tax at the end of the quarter.

Consumer’s Use Tax

Barber and beauty shop operators are responsible for consumer’s use tax on items not purchased for resale. These items are usually purchased outside of the state for use in Iowa and tax has not already been paid.

You must register for consumer’s use tax and remit the tax on the purchase price of tangible personal property and taxable services. This tax is imposed after the sale takes place and only on items on which sales tax has not been paid. You may register for this permit at www.state.ia.us/tax/

Taxable supplies generally include capital or business assets that are used in the course of the barber’s or cosmetologist’s business that are not resold. Magazine subscriptions, professional journals or publications, office stationery, furniture, barber chairs, combs, brushes, hair dryers, and other barber shop and hair salon equipment are all examples of capital assets that are taxable to the hairdresser or barber as they would be the final consumer or end user of those items.

EXCERPTS from the Rules and Regulations of the Iowa Department of Revenue.

Resale Items Treatment

RULE 701-18.31 (422,423). Tangible personal property purchased by one who is engaged in the performance of a service.

RULE 701-18.31(1). In general, effective July 1, 1990.
On and after July 1, 1990, tangible personal property purchased by one who is engaged in the performance of a service is purchased for resale and not subject to tax if: (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price values, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

Tangible personal property which is not sold in the manner set forth is not purchased for resale and thus is subject to tax at the time of purchase by one engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service and the person performing the service shall pay tax upon the sale at the time of purchase.

**Iowa Sales Tax**

RULE 701-26.9(422) Barber and Beauty. Persons engaged in the business of hair cutting, hair styling, hair coloring, wig care, manicuring, pedicuring, applying facial and skin preparations, and all like activities which tend to enhance the appearance of the individual are rendering a taxable service. Each “barber, beauty or other beautification shop or establishment” shall receive only one permit and remit tax as one enterprise, when operated under a common management.

When an operator leases space and is an independent operator, the lessee shall notify the Department and secure a sales tax permit whereby the lessee will be responsible directly for the sales tax due. In order to be considered independent, the lessee must also be independent from the lessor for the purposes of withholding of income tax, unemployment compensation, and Social Security taxes.

The lessor who has leased a part of the premises shall report to the Department the names and addresses of all lessees. If the lessor is accounting for the lessee’s sales, the lessor shall, after the name of each lessee, show the amount of the net taxable sales made by the lessee on each report to the Department, and which net taxable sales are included in the lessor’s return.

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