



V I L L A G E O F K E Y B I S C A Y N E

Village Council

Michael W. Davey, *Mayor*
Allison McCormick, *Vice Mayor*
Luis Lauredo
Edward London
Brett Moss
Katie Petros
Ignacio J. Segurola

MEMORANDUM

DATE: June 11, 2019
TO: Honorable Mayor and Council Members
FROM: Andrea Agha, Village Manager *AAA*
RE: Authorize Payment of IRS Audit Findings

RECOMMENDATION

Authorize execution of required IRS agreement and payment to IRS for back taxes due as a result of the IRS examination for the period between 2015 and 2017 in a negotiated amount of approximately \$34,000, a reduction of almost 64% from the initial \$92,000 demand. Funding will come from the Manager's Office, Professional Services budget allocation.

BACKGROUND

Please see attached explanation of IRS examination results and recommendations prepared by Marcum, LLP ("Exhibit A"), the Village's audit firm under a supplemental work authorization that is funded in the Manager's Budget, Professional Services budget. Some of the referenced attachments in Marcum's report have been withheld due to the personal nature of the information provided within those reports. The authorizing IRS tax forms are also included ("Exhibit B").

RESOLUTION NO. 2019-_____

A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, APPROVING PAYMENT TO THE INTERNAL REVENUE SERVICE FOR TAX ASSESSMENTS; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Internal Revenue Service (“IRS”) conducted an examination of the Village of Key Biscayne’s (“Village”) records for the tax years ending December 31, 2015 through December 31, 2017; and

WHEREAS, the IRS’ examination resulted in a tax assessment being imposed against the Village; and

WHEREAS, the Village has worked with the IRS and negotiated the assessment owed from \$91,098.33 to \$34,153.76; and

WHEREAS, the Village Manager recommends paying the IRS assessment in the amount of \$34,153.76 (the “Assessment”), as shown on Exhibit “A” attached hereto; and

WHEREAS, the IRS requires the Village to sign and return the forms attached hereto as Exhibit “B” (“Forms”) to confirm agreement to pay the Assessment; and

WHEREAS, the Village Council has considered the results of the IRS examination and the negotiated Assessment and desires to approve payment to the IRS for the Assessment in the amount of \$34,153.76 and authorize the Village Manager to execute the required Forms; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the citizens of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA AS FOLLOWS:

Section 1. Recitals. That each of the above-stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval. That the Village Council approves payment to the IRS for the Assessment in the amount of \$34,153.76.

Section 3. Authorization. That the Village Council hereby authorizes the Village Manager to execute the Forms attached hereto as Exhibit "B," subject to approval by the Village Attorney as to form, content and legal sufficiency, and to take any action which is reasonably necessary to implement the intent and purpose of this Resolution.

Section 4. Implementation. That the Village Council authorizes the Village Manager to take any and all actions necessary to implement the intent of this Resolution.

Section 5. Effective Date. That this Resolution shall be effective immediately upon adoption.

PASSED and ADOPTED this _____ day of _____, 2019.

MICHAEL W. DAVEY
VILLAGE MAYOR

ATTEST:

JENNIFER MEDINA, CMC
VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

WEISS SEROTA HELFMAN COLE & BIERMAN, P.L.
VILLAGE ATTORNEY

EXHIBIT A



June 4, 2019

Andrea Agha, Village Manager
Village of Key Biscayne
88 West McIntyre Street
Key Biscayne, FL 33149

RE: Internal Revenue Exam

Dear Andrea,

As requested, I am providing a summary of the results from the Internal Revenue Service ("IRS") Examination. The IRS examination was initially for the tax year ending December 31, 2015 however was expanded through December 31, 2017. This is common when the same charges span over several years.

At the time that Marcum was engaged to work with the Village of Key Biscayne, the agent had completed his fieldwork and provided the tax assessment. Below is a summary of his initial determination and tax due. The detail of these amounts are included in Attachment A. In addition, a detail explanation of the changes are included in Attachment B

- Reclassified Worker - Individuals that were issued a 1099 for their services and were deemed by the IRS to be employees
 - 2015 - \$25,094.37
 - 2016 - \$23,106.50
 - 2017 - \$22,193.56
- Wage Income to be reported for a take home vehicle for employee
 - 2015 - \$1,402.87
- Reclassified worker - Stormwater Consultant – Individual was a 1099 worker in 2015, and later reclassified as a W-2 employee by the Village. There was no changes in the duties and responsibilities of this employee.
 - 2015 - \$4,498.29
- Term Life Insurance - Income to be included in employees' wages for Life Insurance provided over \$50,000
 - 2015 - \$9,712.12
- No W-9 provided - payments issued to vendors with no 1099 issued and no W-9 provided by vendors.
 - 2015 - ,090.62

Total Initial Assessment \$91,098.33



After further discussions, correspondence and providing additional information to the IRS agent, Marcum was able to negotiate the following balances.

- **Reclassified Worker** - Individuals that were issued a 1099 for their services and were deemed by the IRS to be employees
 - 2017 - \$13,449.86
- **Income to be reported for a take home vehicle for employee**
 - \$1,402.87
- **Reclassified worker - Stormwater Consultant** – Individual was a 1099 worker in 2015 that became a W-2 employee in a later year and had the same job duties
 - \$4,498.29
- **Term Life Insurance** - Wages income to be reported for Life Insurance provided over \$50,000
 - \$9,712.12
- **No W-9 provided** - payments issued with no 1099 and no W-9 provided
 - \$5,090.62

Total Initial Assessment \$34,153.76

As noted above, the agent only included one year (2017) for the assessment for reclassified workers. Also, information provided reduced the assessment for the bookkeepers income.

Please note no interest or penalties as communicated by the agent will be assessed (Attachment C).

The forms included in Attachment D, if agreed upon should be signed and returned to the IRS to confirm agreement for the additional tax due.

Sincerely,



Jana K. Aristizabal, CPA
Partner

EXHIBIT B

Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment			Date received by Internal Revenue Service
<i>(Employment Tax Adjustments Not Subject to IRC 7436; Worker Classification or Section 530 Issues Not Addressed in this Exam)</i>			
Taxpayer(s) name	D/B/A		SSN/EIN
Village of Key Biscayne			65-0291811
Address of taxpayer(s) (number, street)	City/Town	State	ZIP code
88 West McIntyre Street	Key Biscayne	FL	33149

Adjustment to Tax, Credits and Penalties

Tax Period Ended	Return Form Number	Kind of Tax and Internal Revenue Code Section	Amount of Tax	Credit Increase (Decrease)	Penalty
12-31-2015	945	3406	\$5,090.62		\$0.00
Total			\$5,090.62		\$0.00

I consent to the immediate assessment (increase in tax and penalties and/or decrease in credits) and the collection of any such amounts. In addition, I accept any overassessment (decrease in tax and penalties and/or increase in credits) shown above. I also agree to any interest as provided by law.

Sign Here	Date
Sign Here	Date
Sign Here By	Title
	Date

Note:
If you consent to the assessment of the amounts shown in this agreement, your signature will expedite our adjustment to your account. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

The examination of your employment tax returns as reflected on this agreement did not include an examination for employment tax purposes of whether any individuals should be treated as employees.

Who Must Sign
If you are making this agreement for a partnership, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed with us.

Memo: Abatement amount under IRC 3402(d) and/or IRC 3102(f)(3) - See explanation on Form 4898

Tax Period Ended	Return Form Number	IRC Code	Credit for Abatement	Tax Period Ended	Return Form Number	IRC Code	Credit for Abatement

Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment

*(Employment Tax Adjustments Not Subject to IRC 7436;
Worker Classification or Section 530 Issues Not Addressed in this Exam)*

Date received by Internal Revenue Service

Taxpayer(s) name Village of Key Biscayne	D/B/A	SSN/EIN 65-0291811
Address of taxpayer(s) (number, street) 88 West McIntyre Street	City/Town Key Biscayne	State FL ZIP code 33149

Adjustment to Tax, Credits and Penalties

Tax Period Ended	Return Form Number	Kind of Tax and Internal Revenue Code Section	Amount of Tax	Credit Increase (Decrease)	Penalty
12-31-2015	941	3101, 3111, 3402	\$15,613.28		\$0.00
Total			\$15,613.28		\$0.00

I consent to the immediate assessment (increase in tax and penalties and/or decrease in credits) and the collection of any such amounts. In addition, I accept any overassessment (decrease in tax and penalties and/or increase in credits) shown above. I also agree to any interest as provided by law.

Sign Here	Date
Sign Here	Date
Sign Here By	Title
	Date

Note:
If you consent to the assessment of the amounts shown in this agreement, your signature will expedite our adjustment to your account. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

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For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed with us.

Memo: Abatement amount under IRC 3402(d) and/or IRC 3102(f)(3) - See explanation on Form 4686

Tax Period Ended	Return Form Number	IRC Code	Credit for Abatement	Tax Period Ended	Return Form Number	IRC Code	Credit for Abatement

ATTACHMENT D

Form **14491**
(May 2013)

Department of the Treasury - Internal Revenue Service

Closing Agreement On Final Determination Covering Specific Matters Regarding Worker Classification

Under section 7121 of the Internal Revenue Code ("IRC"), Village of Key Biscayne, 88 West McIntyre Street, Key Biscayne, FL 33149, Taxpayer Identification Number 65-0291811, ("taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

WHEREAS, there is a dispute between the parties as to whether certain workers classified by taxpayer as camera operators, sports directors and a plumbing inspector are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

WHEREAS, the taxpayer is presently treating the camera operators, sports directors and a plumbing inspector as independent contractors;

WHEREAS, the taxpayer has timely filed Forms 1099 for each of its camera operators, sports directors and a plumbing inspector for all applicable periods from January 1, 2017 through December 31, 2017, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

WHEREAS, the parties wish to resolve this dispute for all camera operators, sports directors and a plumbing inspector engaged by the taxpayer on or after January 1, 2015

NOW IT IS HEREBY DETERMINED AND AGREED for federal employment tax purposes that:

- (1) The Internal Revenue Service will assess and the taxpayer will pay the following amounts to the United States Government in full discharge of any federal employment tax liability it may owe for the periods shown below resulting directly or indirectly from its failure to pay and/or withhold federal income tax, FICA, or FUTA taxes on the payments to its camera operators, sports directors and a plumbing inspector :

Period	Type of Tax	Amount to be Assessed	
		Tax	Penalties
2017	FICA and Income Tax	\$10,464.08	\$0.00

- (2) The Internal Revenue Service will not disturb taxpayer's classification of such camera operators, sports directors and a plumbing inspector for federal employment tax purposes for any period from January 1, 2015 through June 30, 2019.
- (3) Beginning July 1, 2019, and for all periods thereafter, camera operators, sports directors and a plumbing inspector and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

ATTACHMENT D

Closing Agreement With Village of Key Biscayne

(4) The taxpayer waives any right it may have to claim relief under section 530 of the Revenue Act of 1978.

(5) IRC Section 6205 shall apply to the amounts contained in paragraph (1) above, except FUTA tax.

This agreement is final and conclusive except:

- (1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts;
- (2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law; and
- (3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to the tax period.

By signing, the above parties certify that they have read and agreed to the terms of this document.

Taxpayer

Taxpayer name Village of Key Biscayne

By

Date signed

Title

Taxpayer's Representative

By

Date signed

Commissioner of Internal Revenue

By

Date signed

Title

Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment

(Employment Tax Adjustments Subject to IRC 7436)

Date received by Internal Revenue Service

Taxpayer(s) name Village of Key Biscayne	D/B/A	SSN/EIN 65-0291811
Address of taxpayer(s) (number, street) 88 West McIntyre Street	City/Town Key Biscayne	State FL ZIP code 33149

Adjustment to Tax, Credits and Penalties

Tax Period Ended	Return Form Number	Kind of Tax and Internal Revenue Code Section	Amount of Tax	Credit Increase (Decrease)	Penalty
12-31-2017	941	IRC 3101, 3111, 3402	\$10,464.08		\$0.00
Total			\$10,464.08		\$0.00

I consent to the immediate assessment (increase in tax and penalties and/or decrease in credits) and collection of any such amounts. In addition, I accept any overassessment (decrease in tax and penalties and/or increase in credits) shown above, plus any interest provided by law. I understand that by signing this agreement, I am waiving the restrictions on assessment provided in section 7436(d) and 6213(a) of the Internal Revenue Code of 1986.

Sign Here By	Title	Date
Sign Here		Date
Sign Here		Date

Note:

If you consent to the assessment of the amounts shown in this agreement, your signature will expedite our adjustment to your account. Your consent will not prevent you from filing a claim for refund (after you have paid the tax) if you later believe you are entitled to a refund. It will not prevent us from later determining, if necessary, that you owe additional tax; nor extend the time provided by law for either action.

Who Must Sign

If you are making this agreement for a partnership, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.

For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.

For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed with us.

Memo: Abatement amount under IRC 3402(d) and/or IRC 3102(f)(3) - See explanation on Form 4006

Tax Period Ended	Return Form Number	IRC Code	Credit for Abatement	Tax Period Ended	Return Form Number	IRC Code	Credit for Abatement

Form **14491**
(May 2013)

Department of the Treasury - Internal Revenue Service

**Closing Agreement On Final Determination Covering Specific
Matters Regarding Worker Classification**

Under section 7121 of the Internal Revenue Code ("IRC"), Village of Key Biscayne, 88 West McIntyre Street, Key Biscayne, FL 33149, Taxpayer Identification Number 65-0291811, ("taxpayer") and the Commissioner of Internal Revenue ("Commissioner") make the following closing agreement:

WHEREAS, there is a dispute between the parties as to whether certain workers classified by taxpayer as Village Accountant are independent contractors or employees of taxpayer for purposes of federal income tax withholding, Federal Insurance Contributions Act (FICA) and Federal Unemployment Tax Act (FUTA) taxes ("federal employment tax");

WHEREAS, the taxpayer is presently treating the Village Accountant as independent contractors;

WHEREAS, the taxpayer has timely filed Forms 1099 for each of its Village Accountant for all applicable periods from January 1, 2017 through December 31, 2017, in accordance with the provisions of paragraph 3.02 of Rev. Proc. 85-18, 1985-1 C.B. 518, and Rev. Rul. 81-224, 1981-2 C.B. 197; and

WHEREAS, the parties wish to resolve this dispute for all Village Accountant engaged by the taxpayer on or after January 1, 2015.

NOW IT IS HEREBY DETERMINED AND AGREED for federal employment tax purposes that:

- (1) The Internal Revenue Service will assess and the taxpayer will pay the following amounts to the United States Government in full discharge of any federal employment tax liability it may owe for the periods shown below resulting directly or indirectly from its failure to pay and/or withhold federal income tax, FICA, or FUTA taxes on the payments to its Village Accountant:

Period	Type of Tax	Amount to be Assessed	
		Tax	Penalties
12-31-2017	941	\$2,965.78	

- (2) The Internal Revenue Service will not disturb taxpayer's classification of such Village Accountant for federal employment tax purposes for any period from January 1, 2015 through June 30, 2019.
- (3) Beginning July 1, 2019, and for all periods thereafter, Village Accountant and persons performing equivalent duties regardless of taxpayer's job titles will be treated as employees for all federal employment tax purposes.

Closing Agreement With Village of Key Biscayne

- (4) The taxpayer waives any right it may have to claim relief under section 530 of the Revenue Act of 1978.
- (5) IRC Section 6205 shall apply to the amounts contained in paragraph (1) above, except FUTA tax.

This agreement is final and conclusive except:

- (1) the matter it relates to may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts;
- (2) it is subject to the Internal Revenue Code sections that expressly provide that effect be given to their provisions (including any stated exception for Code section 7122) notwithstanding any other law or rule of law; and
- (3) if it relates to a tax period ending after the date of this agreement, it is subject to any law, enacted after the agreement date, that applies to the tax period.

By signing, the above parties certify that they have read and agreed to the terms of this document.

Taxpayer	
Taxpayer name Village of Key Biscayne	
By	Date signed
Title	
Taxpayer's Representative	
By	Date signed
Commissioner of Internal Revenue	
By	Date signed
Title	

Agreement to Assessment and Collection of Additional Tax and Acceptance of Overassessment <i>(Employment Tax Adjustments Subject to IRC 7436)</i>			Data received by Internal Revenue Service
Taxpayer(s) name Village of Key Biscayne		D/B/A	SSN/EIN 65-0291811
Address of taxpayer(s) (number, street) 88 West McIntyre Street		City/Town Key Biscayne	State FL ZIP code 33149

Adjustment to Tax, Credits and Penalties					
Tax Period Ended	Return Form Number	Kind of Tax and Internal Revenue Code Section	Amount of Tax	Credit Increase (Decrease)	Penalty
12-31-2017	941	3101,3111, 3402	\$2,985.78		
Total			\$2,985.78		

I consent to the immediate assessment (increase in tax and penalties and/or decrease in credits) and collection of any such amounts. In addition, I accept any overassessment (decrease in tax and penalties and/or increase in credits) shown above, plus any interest provided by law. I understand that by signing this agreement, I am waiving the restrictions on assessment provided in section 7436(d) and 6213(a) of the Internal Revenue Code of 1986.

Sign Here ▶	By	Title	Date
Sign Here ▶			Date
Sign Here ▶			Date

Note:
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If you are making this agreement for a partnership, all partners must sign. However, one partner may sign with appropriate evidence of authorization to act for the partnership.
For a corporation, enter the name of the corporation followed by the signature and title of the officer(s) authorized to sign.
For an agent or attorney acting under a power of attorney, a power of attorney must be sent with this form if not previously filed with us.

Memo: Abatement amount under IRC 3402(d) and/or IRC 3102(f)(3) - See explanation on Form 4866								
Tax Period Ended	Return Form Number	IRC Code	Credit for Abatement		Tax Period Ended	Return Form Number	IRC Code	Credit for Abatement