Worker Classification: Employee or Independent Contractor?



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A Note Before We Begin ...

- This presentation is designed to provide information – not specific determination for any situation.
- Worker classification determinations are made on a case by case basis, depending on specific facts and circumstances.



Worker Classification

- Workers you hire may be:
 - —Independent contractors
 - -Employees
- Determination



Basic Definitions

- Employee Individual who performs services for you who is subject to your control regarding what will be done AND how it will be done.
- Independent Contractor Individual who performs services for you – but you control only the work result.



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Employee vs. Independent Contractor

Categories of Evidence:

- 1. Behavioral control
- 2. Financial control
- 3. Type of relationship of the parties



Behavioral Control

- Type of instruction given
- Degree of instruction
- Evaluation systems
- Training provided by the business



Behavioral Control

 Key fact to consider is whether business retains the RIGHT to control worker regardless of whether the business actually exercises that right



Financial Control

- Significant investment
- Unreimbursed expenses
- Opportunity for profit or loss
- Services available to the market
- Payment method



Type of Relationship

- Written contract
- Employee-type benefits provided
- Relationship Permanency
- Key business activity provided by services



Determination

- File Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding with IRS
- Six-month processing time



Form 8919

- Misclassified workers report their share of Social Security and Medicare on Form 8919, Uncollected Social Security and Medicare Tax on Wages
- Replaces Form 4137 for misclassified workers



Officer Compensation

- Officers are defined as employees for FICA, FUTA and income tax withholding
- Officers are not considered employees if they:
 - Perform no services or only minor services
 - Are not entitled to remuneration (direct or indirect)



Officer Compensation

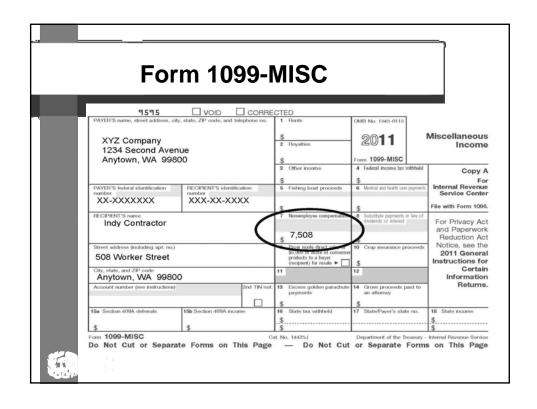
- Distributions
- Loans to shareholders
- Payments of personal expenses
- Excessive rent payments
- Management fees
- Fringe benefits



Next Steps: Independent Contractor

- Contractor completes Form W-9
 - Social Security Number or Employer Identification Number required
- File Form 1099-MISC if \$600 or more paid for services during year
 - See instructions for exceptions





Filing Information Returns Electronically

- System for electronic filing of any of Form 1099s and other information returns, except W-2
- Later due dates for electronically filed forms
- Visit IRS.gov, search Keyword "FIRE"
- Assistance
 - -Call (866)-455-7438
 - -Email mccirp@irs.gov



Next Steps

- Employee completes Forms I-9 & W-4
- Employer
 - -Withholds income tax, FICA
 - -Completes Form W-2 at year end
 - Files Form W-2 with Social Security Administration
 - Visit SSA.gov/employer for free online Form W-2 filing & SSN verification service



Next Steps - Employer (Cont'd.)

- Responsible for depositing federal income tax withheld, FICA and FUTA taxes
- Deposit taxes using EFTPS
- Report wages, taxes by filing returns:
 - -Form 941 or Form 944 for income tax, FICA
 - -Form 940 for FUTA



Taxable Wages

- May be paid in cash or any other form
- Non-cash measured by fair market value
- Includes salaries, fees, tips, bonuses and commissions



Misclassification of Workers

- Determination
- Section 530 relief



§530 - Relief Requirements

- Reasonable basis
- Substantive consistency
- Reporting consistency



§530 - Reasonable Basis

- Judicial precedent
- Prior audit
- Industry practice
- Other reasonable basis



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§503 Consistency Requirements

- Treat all workers in similar positions the same (substantive consistency)
- File all required returns for example,
 Form 1099-MISC (reporting consistency)



Resources

- Visit IRS.gov, search Keywords
 - -"worker classification"
 - Handout containing worker classification URLs
 - Pub 1779 Independent Contractor or Employee
 - -Form SS-8, Determination of Worker Status
 - -Pub 1976, Section 530 Relief Requirements



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