



News Alert

Government Is Cracking Down On Claims of “Independent Contractor” Status

Many individuals work for others under the assumption that they qualify as “independent contractors,” rather than employees. Since many of the rules which apply with regard to employees do not apply to independent contractors (such as federal and state income tax withholding rules, unemployment tax rules, Social Security and FICA tax rules, and worker’s compensation rules), many business owners preferred this status for their workers. In addition, many workers preferred this status for themselves, often because they received gross pay for their efforts rather than net pay after withholding. The federal and most state governments have come to see independent contractor status as an area where abuse and noncompliance has become widespread, and have recently begun much more closely examining claims by workers and business owners that independent contractor status applies in a particular situation. As an example, please see the February 18, 2009 New York Times article written by Steven Greenhouse at this URL, <http://www.nytimes.com/2010/02/18/business/18workers.html?th&emc=th>.

Those who are using workers in their businesses and treating those workers as independent contractors, rather than employees, should take the time now to review their situations and determine whether independent contractor status is truly appropriate. If the IRS or a state Department of Revenue decides to audit the business and determines that the workers should have been considered employees and not independent contractors, the resulting taxes, penalties, and interest are usually quite significant. The resulting damage can cripple or potentially kill the business.

Our firm recently handled this type of IRS audit for a client. The client was a company which acted essentially as a broker between cable installers and cable companies. A worker, who appears to have been audited himself, likely for failing to properly report his independent contractor income on his tax returns, filed a form with the IRS stating that he had actually been an employee of the client. If the worker’s claim of employee status had been upheld by the IRS, the result could have been catastrophic for the company, which regularly dealt with large numbers of similarly situated workers and had been doing so for many years. If all of those workers were recategorized as employees for all of the years at issue, the resulting tax liability would have been huge. We put in a significant amount of research and presented the IRS with a well drafted legal argument and supporting documentation to show that our client was justified in treating his workers as independent contractors, and the matter was eventually dropped without any recategorization.

If you, a client of yours, or anyone else you know may need or want our assistance in considering whether their workers are properly classified, or in defending a worker classification audit or appeal, we are here to help.