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1099 - INDEPENDENT CONTRACTORS

The IRS uses a Right to Control Test to determine whether a worker is an employee for tax purposes.
If the employer has the right to control the worker, that individual is deemed an employee and the company is subject to employment tax obligations. If the company does not exercise control over the worker but instead gives that worker significant independence, then the worker is generally viewed as an independent contractor. The more control and supervision by the employer, the more likely the worker will be deemed an employee.

This is a balancing test. **No single factor is dispositive, and judgments must be made on a case-by-case basis.**
The IRS's audit branch evaluates a company's right to control in three categories: Behavioral Control, Financial Control, and the Type of Relationship.

Behavioral Control

1. Types of Instruction Given. **An employee is generally subject to the business's instructions about when, where, and how to work**. All of the following are examples of types of instructions given about how to do work:
   - When and where to do the work
   - What tools or equipment to use
   - What workers to hire or to have assist with the work
   - Where to purchase supplies and services
   - What work must be performed by a specified individual
   - What order or sequence to follow when performing the work
2. Degree of Instruction. **The more detailed the instructions, the more control the business exercises over the worker. Instructions that are more detailed indicate that the worker is an employee.** Less detailed instructions reflect less control, indicating that the worker is more likely an independent contractor.

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3. Evaluation System. **If the business uses an evaluation system to measure details of how the work is performed, then this factor would point toward employment.** If a business evaluates only the end result, then this factor can support either an independent contractor or an employment relationship.
4. Training. **If a business provides a worker with training on how to do the job, that tends to support a conclusion that the worker is an employee.** Periodic or ongoing training about procedures and methods can be considered stronger evidence of an employer-employee relationship. In contrast, independent contractors are generally expected to devise their own methods for completing an assignment.

Financial Control

1. Significant Investment. **An independent contractor often has a significant investment in the equipment he or she uses in working for someone else**. Some types of work by their nature, however, do not involve significant expenditures.
2. Unreimbursed Expenses. **The reimbursement of expenses weighs in favor of employment status**. An independent contractor, on the other hand, is more likely to factor unreimbursed expenses into the amount he or she charges for the services.
3. Opportunity for Profit or Loss. **The opportunity to make a profit or incur a loss is one of the most significant and persuasive factors.** If a worker has a significant investment in tools and equipment, prices services too low, and fails to cover expenses, the worker will lose money. The opportunity to lose money is a hallmark of being in business for one's self and is a strong indication of independent contractor status. Similarly, a smart businessperson who prices services in a way that turns a profit is also likely to be deemed in business and not an employee.
4. Services Available to the Market. **An independent contractor is generally free to seek out business opportunities.** Independent contractors often advertise, maintain a visible business location, and are available to work in the relevant market.
5. Method of Payment. **Payment by the hour, day, or week tends to support an employment relationship.** The payment of a flat fee to complete a job is more indicative of independent contractor status.

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Type of Relationship

1. Written Contract. **A written contract defining the worker as an independent contractor can be helpful, but contractual language is a minor factor that is given little weight by the courts.** The actual facts of the relationship are far more important than how the parties contractually define the relationship. The lack of a contract, on the other hand, can tip the scales toward employment.
2. Employee Benefits. **Workers who receive health or dental insurance, pension or 401(k) contributions, paid vacation, sick days, or disability insurance are almost certainly employees.** Businesses generally do not grant these benefits to independent contractors and, in the case of insurance, often cannot grant such benefits to contractors. The lack of employee benefits, however, does not necessarily mean that the worker is an independent contractor.
3. Permanency of the Relationship. **A worker who is retained for an indefinite period of time, moving from project to project or working without an end date, is more likely to be considered an employee.** An independent contractor relationship is more likely to last only for a definite period or until the completion of a definite project.
4. Services Provided as a Key Activity of the Business. **If a worker provides services that are a key aspect of the business, it is more likely that the business will have the right to direct and control the worker's activities and that the worker will be considered an employee.** For example, if a software development firm retains a software developer, the retention may be considered employment. On the other hand, if a software firm retains a security guard, that individual is more likely to be considered a contractor.

Conclusion

The IRS applies a common law right-to-control test but places special emphasis on certain factors. No single factor is determinative, and the test is a balancing test