



## INDEPENDENT CONTRACTOR OR EMPLOYEE

### Which are you?

*For federal tax purposes, this is an important distinction. Worker classification affects how you pay your federal income tax, social security and Medicare taxes, and how you file your tax return. Classification affects your eligibility for employer and social security and Medicare benefits and your tax responsibilities. If you aren't sure of your work status, you should find out now. This brochure can help you.*

The courts have considered many facts in deciding whether a worker is an **independent contractor** or an **employee**. These relevant facts fall into three main categories: *behavioral control*; *financial control*; and *relationship of the parties*. In each case, it is very important to consider all the facts – no single fact provides the answer. Carefully review the following definitions.

### BEHAVIORAL CONTROL

These facts show whether there is a right to direct or control how the worker does the work. A worker is an employee when the business has the right to direct and control the worker. The business does not have to actually direct or control the way the work is done – as long as the employer has the right to direct and control the work. For example:

- **Instructions** – if you receive extensive instructions on how work is to be done, this suggests that you are an **employee**. Instructions can cover a wide range of topics, for example:
  - how, when, or where to do the work
  - what tools or equipment to use

- what assistants to hire to help with the work
- where to purchase supplies and services

If you receive less extensive instructions about what should be done, but not how it should be done, you may be an **independent contractor**. For instance, instructions about time and place may be less important than directions on how the work is performed.

- **Training** – if the business provides you with training about required procedures and methods, this indicates that the business wants the work done in a certain way, and this suggests that you may be an **employee**.

### FINANCIAL CONTROL

These facts show whether there is a right to direct or control the business part of the work. For example:

- **Significant Investment** – if you have a significant investment in your work, you may be an **independent contractor**. While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an **independent contractor**.
- **Expenses** – if you are not reimbursed for some or all business expenses, then you may be an **independent contractor**, especially if your unreimbursed business expenses are high.
- **Opportunity for Profit or Loss** – if you can realize a profit or incur a loss, this suggests that you are in business for yourself and that you may be an **independent contractor**.

### RELATIONSHIP OF THE PARTIES

These are facts that illustrate how the business and the worker perceive their relationship. For example:

- **Employee Benefits** – if you receive benefits, such as insurance, pension, or paid

leave, this is an indication that you may be an **employee**. If you do not receive benefits, however, you could be either an **employee** or an **independent contractor**.

- **Written Contracts** – a written contract may show what both you and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based on other facts.



## When You Are an Employee

- Your employer must withhold income tax and your portion of social security and Medicare taxes. Also, your employer is responsible for paying social security, Medicare, and unemployment (FUTA) taxes on your wages. Your employer must give you a Form W-2, *Wage and Tax Statement*, showing the amount of taxes withheld from your pay.
- You may deduct unreimbursed employee business expenses on Schedule A of your income tax return, but only if you itemize deductions and they total more than two percent of your adjusted gross income.



## When You Are an Independent Contractor

- The business may be required to give you Form 1099-MISC, *Miscellaneous Income*, to report what it has paid to you.
- You are responsible for paying your own income tax and self-employment tax (Self-Employment Contributions Act – SECA). The business does not withhold taxes from your pay. You may need to make estimated tax payments during the year to cover your tax liabilities.
- You may deduct business expenses on Schedule C of your income tax return.

## IRS TAX PUBLICATIONS

If you are not sure whether you are an employee or an independent contractor, get Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Publication 15-A, *Employer's Supplemental Tax Guide*, provides additional information on independent contractor status.

## IRS ELECTRONIC SERVICES

You may download and print IRS publications, forms, and other tax information materials on the Internet at [www.irs.gov](http://www.irs.gov) and you may call the IRS at 1-800-829-3676 (1-800-TAX-FORM) to order free tax publications and forms.

From a fax machine, dial (703) 368-9694 and you will immediately get a list of IRS tax forms faxed back to you. Follow the voice prompts to get specific forms faxed to you.

Publication 1796, *Federal Tax Products on CD-ROM*, of current and prior year tax publications and forms, can be purchased from the National Technical Information Service (NTIS). You may order Publication 1796 toll-free through the IRS at 1-877-233-6767 or via the Internet at [www.irs.gov/cdorders](http://www.irs.gov/cdorders).

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*Often your tax questions can be answered by reading tax publications and related forms. But when you need more information, you may call the IRS at 1-800-829-1040.*

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