

MERCHANT PROCESSING NEWS



PURPOSE OF THIS NEWSLETTER

It is my desire to both educate and assist business owners on the subject of “merchant services”.

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Recently I have been approached by several business owners with questions pertaining to the hiring of a “work at home employee / Independent Contractor (I.C.)”. I am not a Certified Public Accountant (CPA) and before making any decisions I highly recommend that you to council with a CPA. I have, however, researched and compiled some information that I hope will give you some direction.

## Employee ...



In the middle to late 1990’s the “Employee / I.C.” clarification was debated hot and heavy since it affected the workplace of numerous industries. The IRS developed a 20 factor test to determine whether an individual would be considered an employee or an I.C. Since that time new rules have been developed called the “IRS Worker Classification Training Guidelines” (Oct 1996). The IRS scrutinized the 20 Factor Test, made a few adjustments and placed them in 3 different categories –

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## What’s Inside:

- Purpose of this newsletter
- Employee – Behavioral Control, Financial Control, Relationship of the Parties
- Independent Contractor

Behavioral Control, Financial Control and the Relationship of the Parties. Please review the following data:

### Behavior Control

These facts show whether there is a right to direct or control how a person 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 extensive instructions on how work is to be done, this suggests an employee. Instructions can cover a wide range of topics such as:
  - how, when, or where to do the work
  - what tools or equipment to use
  - what assistants to hire to help you with the work
  - where to purchase supplies and services.

If less extensive instructions are given such as instructions about time and place may be less important that directions on how the work is performed then the classification may be as an I.C.

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

### 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 the significant investment is not by the business then the person may be an **I.C.** While there is no precise dollar test, the investment must have substance. However, a significant investment is not necessary to be an **I.C.**
- **Expenses** – if the person is not reimbursed for some or all business expenses, then the person may be an **I.C.**, especially if the unreimbursed business expenses are high.
- **Opportunity for Profit or Loss** – if the person can realize a profit or incur a loss, this suggests the person is in business for themselves and may be an **I.C.**

### Relationship of the Parties

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

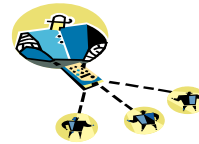
- **Employee Benefits** – if the worker receives benefits, such as insurance, pension, or paid leave, this is an indication that the person may be an **employee**. If the person does not receive benefits, however, the person could be either an **employee** or an **I.C.**
- **Written Contracts** – a written contract may show what both the person and the business intend. This may be very significant if it is difficult, if not impossible, to determine status based upon other facts.

### Duties of an Employer and Employee

If a person is classified as an employee, the employer and employee have several duties. For example:

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

### Independent Contractor ...



The business may be required to give the independent contractor Form 1099 – Misc, *Miscellaneous Income*, to report what has been paid to the I.C.

The I.C. is responsible for paying their income tax and self-employment tax (Self-Employment Contributions Act – SECA). The business does not withhold taxes from income. The I.C. may need to make estimated tax payments during the year to cover tax liabilities.

Business expenses may be deducted on Schedule C of income tax returns by the I.C.

Business owners and independent contractors need to check with their CPAs to make the correct decisions in these matters.

**More to come next month . . .**

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