

benefits to employees, such as health insurance, pensions, and vacation pay.

- **Permanency of the relationship.** Employer-employee relationships generally continue indefinitely.

- **Extent services performed by the worker are a key aspect of the business hiring the worker.** A worker who is key to the success of a business is more likely to be controlled by the business, which indicates employee status. For example, an accounting firm hires an accountant to provide accounting services for clients. It is more likely that the accounting firm will present the accountant's work as its own and would have the right to control or direct that work.

Incorrect Treatment of Employees as Independent Contractors

A worker who receives a 1099-MISC instead of a W-2 has two options.

- 1) Agree with the way the business has classified the worker, file Schedules C and SE, and pay self-employment tax on the earnings, or
- 2) File Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. The IRS will then decide if the worker should have been treated as an employee, subject to income and FICA tax withholding. If the IRS agrees that the worker really is an employee, the employer will be liable for employment taxes. However, if the IRS determines that the worker is really an independent contractor, the worker will be liable for paying SE tax.

Example: Harold owns a restaurant and hires Jim, a gardener, to mow the lawn and weed the landscaping once a week. The contract states that

Jim will arrive at the restaurant on Monday mornings, mow the lawn, pull weeds, and tend to the landscaping. In exchange, Harold agrees to pay Jim \$50 for this service each week. Jim supplies his own lawnmower, weed eater, and hedge clippers. Jim decides what time he arrives and how long the job will take him. Harold does not supervise Jim in his tasks or dictate to him how they are to be done. Jim is an independent contractor.

Example: Jeffrey owns Jeffrey's Gardening Service and employs three gardeners to perform services for his business. Jeffrey pays his gardeners a fixed wage and withholds taxes, FICA, and various benefits and remits those withholdings to the appropriate government agencies. In addition, Jeffrey provides his employees with the tools and equipment they need to perform their work, instructs his employees which jobs to go to, and supervises them while they are doing their work. Jeffrey's workers are employees.

Contact Us

There are many events that occur during the year that can affect your tax situation. Preparation of your tax return involves summarizing transactions and events that occurred during the prior year. In most situations, treatment is firmly established at the time the transaction occurs. However, negative tax effects can be avoided by proper planning. Please contact us in advance if you have questions about the tax effects of a transaction or event, including the following:

- Pension or IRA distributions.
- Significant change in income or deductions.
- Job change.
- Marriage.
- Attainment of age 59½ or 70½.
- Sale or purchase of a business.
- Sale or purchase of a residence or other real estate.
- Retirement.
- Notice from IRS or other revenue department.
- Divorce or separation.
- Self-employment.
- Charitable contributions of property in excess of \$5,000.

This brochure contains general information for taxpayers and should not be relied upon as the only source of authority. Taxpayers should seek professional tax advice for more information.

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Employee or Independent Contractor

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