

Clifford's Notes

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Employee or Independent Contractor?

The IRS does not have any specific rules for differentiating an employee from an independent contractor. The IRS and courts consider a variety of facts in making the determination. Generally, these facts fall into the following three categories:

1) Behavioral Control

Generally, you are an employee if the business has a right to direct and control how and when you do your job, whether or not that right is exercised.

2) Financial Control

Independent contractors usually have a substantial investment in their business, pay all the expenses, and bear all the risks of loss. Employees

usually have little or no such involvement.

3) Relationship of the Parties

If you receive benefits, such as insurance, pension or paid leave, you are probably an employee. Written contracts often provide clues to employment status, but a contract alone cannot dictate your employment status.

Reporting Responsibilities

If you are an employee, you should receive a Form W-2. If you are an independent contractor and earn \$600 or more, you should receive a Form 1099-MISC. Independent contractors must pay the full 15.3% of FICA (Social Security



Which are you?

Worker classification affects your taxes, your eligibility for benefits, and your reporting responsibilities.

and Medicare) taxes, whether or not they receive a 1099-MISC. Employees only pay 7.65% and the employer pays the other half.

Special Case: Clergy

Generally, clergy employed in ministry are employees for income tax purposes and should receive a W-2. However, they are self-employed for FICA tax purposes, so the employer should not withhold any Social Security or Medicare tax from clergy wages.

Your tax professional can provide further information and guidance.

Please keep the following dates in mind:

- **October 17, 2011** - Tax return filing deadline for all individuals who filed an extension for their 2010 return.
- **October 31, 2011** - Employer's Form 941 due.
- **December 31, 2011** - End of fourth quarter for payroll taxes. Form 941 will be due January 31, 2012. State and city due dates vary.

The Secret!

The current economic situation is more challenging than ever. I listen to my peers on TV and radio and in the papers saying how long they think anyone can stay in this financial holding pattern. Here is the secret: There is no secret. People have to readjust their accounts to reflect what is going on today and for the future. Secure and fixed products are popular for a reason: They ensure you will never lose a penny and will probably not outlive your income. Remember, it's not how much you can make, it's how long you can live on what is left.



- Kevin Monty

Potential Pitfalls of Incorporation

You may be thinking about incorporating your business. Before you incorporate, consider the following potential pitfalls, and consult with your tax professional and attorney.

- **Separate Corporate Tax Return**—A corporation must file a separate tax return. C Corporations pay tax at the corporate tax rates, which are usually higher than those for individuals. S Corporations pass income to the shareholder(s), and the shareholder(s) report the income and pay tax on their individual return(s).
- **Separate Corporate Assets**—The corporation should have separate accounts in its own name. Business assets should be titled in the name of the corporation. Never mix

personal assets with corporate assets.

- **Limited Liability Protection**—Do not think that you are safe just because you incorporated. A court may “pierce the corporate veil” and hold you responsible if you play a significant role in the operations. Also, the IRS may hold you liable for unpaid taxes.
- **Payroll Responsibilities**—Shareholders who operate the corporation must be treated as employees, subject to payroll, unemployment, and worker’s compensation taxes, even if there are no other employees.
- **“Reasonable” Pay Requirements**—Shareholders who work for the corporation must



receive “reasonable” compensation. The IRS scrutinizes compensation to determine whether owners are underpaying themselves to avoid taxes.

- **Basis Calculations**—Shareholders have a basis in the corporation. Basis is increased by contributions and income and decreased by distributions and losses. Loans between shareholders and the corporation can affect basis. Shareholders must keep detailed records of their transactions with the corporation. No records mean no deduction.
- **Excess Distributions**—Often owners mistakenly take distributions greater than basis, resulting in taxable capital gains.



New IRS Ruling for Cell Phones

An employer may now provide cell phones as an entirely tax-free fringe benefit as long as the employer has substantial business reasons, other than employee compensation, for providing the cell phone, such as need for the employee to be on-call or to be available for clients at all times.



Starting a Business?

Starting a business involves a lot of hard work and many potential pitfalls. Let us help you avoid common tax and bookkeeping pitfalls. We offer a variety of services that can ease your burden, including payroll, bookkeeping, QuickBooks® (setup, training, and support), tax planning, and consulting.



Moving?

Have you changed your address since you filed your last tax return? Do not forget to update your address with your tax preparer and the IRS. You can notify the IRS of your new address by completing and filing Form 8822, *Change of Address*. The form is available on the IRS website: <http://www.irs.gov/>