

Appendix B

Factors Weighed in Determining Whether a Worker Is an Employee or an Independent Contractor for Federal Tax Purposes

1. *Behavioral control* refers to the facts that show whether the business has a right to direct and control how the worker does the task for which hired. Factors to consider are as follows:

- Instructions the business gives the worker. An employee is generally subject to the business's instructions about when, where, and how to work. Even if no instructions are given, sufficient behavioral control may exist if the employer has the right to control how the work results are achieved.
- Training the business gives the worker. An employee may be trained to perform services in a particular manner. Independent contractors ordinarily use their own methods.

2. *Financial control* refers to the facts that show whether the business has a right to control the business aspects of the worker's job. Factors to consider are as follows:

- The extent to which the worker has unreimbursed business expenses. Independent contractors are more likely to have unreimbursed expenses than employees. Fixed ongoing costs incurred regardless of whether the work is currently being performed are particularly important. However, employees may also incur unreimbursed expenses in connection with services they perform for their businesses.
- The extent of the worker's investment. An independent contractor often has a significant investment in the facilities he or she uses in performing services for someone else. However, a significant investment is not required.

- The extent to which the worker makes services available to the relevant market. A worker who makes his or her services available to the general public in the relevant market is usually considered an independent contractor.
- How the business pays the worker. An employee is generally paid by the hour, week, or month. An independent contractor is usually paid by the job.
- The extent to which the worker can realize a profit or incur a loss. An independent contractor can make a profit or incur a loss.

3. *Types of relationships* among parties are as follows:

- Written contracts describing the relationship the parties intended to create.
- Whether the business provides the worker with employee-type benefits, such as insurance, a pension plan, vacation pay, or sick pay.
- The permanency of the relationship. If an employee is engaged with the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence that the intent was to create an employer-employee relationship.
- The extent to which services performed by the worker are a key aspect of the regular business of the company. If a worker provides services that are a key aspect of the regular business activity, it is more likely that the business will have the right to direct and control the worker's activities.

Source: (22).