

EMPLOYER – EMPLOYEE - CONTRACTOR

The Internal Revenue Service realizes that businesses prefer to use “independent contractors” rather than employees. The savings come through the elimination of social security taxes, other payroll taxes, and employee fringe benefits.

Some important IRS definitions are as follows:

- * An employer is an individual, corporation, partnership, a trust, an estate, or other entity including tax-exempt organizations for whom an individual performs services of whatever nature as an “employee.”
- * An employee is an individual who performs services subject to the control of an employer both as to what services shall be performed and as to how they shall be performed.
- * Independent contractor has no clear definition. Congress has not yet enacted legislation to clarify which workers will be independent contractors and which will be employees. In the meantime, a taxpayer can treat an individual as an independent contractor if: (1) there is a “reasonable basis” for not treating the worker as an employee, (2) you did not, and you currently are not treating an individual as an employee, and (3) you file your tax returns on the basis that the worker is not an employee.

In general, an independent contractor has his own tools, may work on his own premises, is subject to incurring a loss on the project, determines how the work is to be accomplished, hires his own help, works on his own schedule, and probably works for others besides you.

An employee, on the other hand, has his hours and his method of work supervised, is probably trained by the employer, probably works only for the one company, and has an ongoing relationship with the employer.