Tax Letter

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Dear clients and friends:

When a worker performs services and receives some form of compensation, an important question is whether the compensation is subject to employment taxes, and other employment related issues. The answer depends on whether the worker is an employee or an independent contractor. To determine whether a worker is an employee or an independent contractor depends on sets of facts and circumstances under which the worker provides his or her services.

As far as the IRS is concerned, ALL evidence, facts and circumstance of the degree of control and /or the degree of independence must be considered. Therefore, the IRS came up with the following factors, known as the **20-Factor-Test,** to determine whether a specific worker is an employee or an independent contractor. However, there is no set rule that how many factors are required to determine **"status".** It is subjective and generally depends upon the nature and characteristics of a business.

(1) A worker who is required to comply with another person's instructions about when, where and how to perform is ordinarily an employee.

(2) On going or periodic training provided by a business regarding procedures and methods to be used at work is "strong indication" of employer-employee relationship.

(3) If the success or continuation of a business depends on a relatively high level of performance of certain services by a specific worker, and the worker who performs them is subject to certain level of control by the owner of the business, an employment relationship most likely exists.

(4) Requirement that services must be rendered personally by the worker.

(5) The business hires, supervises and pays for the assistants for the worker, or the worker hires, supervises and pays for his assistants.

(6) A continuing relationship between a business and a worker indicates that an employer-employee relationship exists.

(7) Whether the business sets the hours and time of work, or the worker sets his own hours and time.

(8) An independent contractor usually would be free to work for whom he chooses and should not be restricted by the business.

(9) The fact that a business requires work to be performed on the business's premises suggests control over the worker.

(10)   The requirement that the worker perform his services in the order or sequence set by the business again suggests control over the worker.

(11)   A business requires a worker to submit oral or written reports, regularly, indicates control over the worker.

(12)   Payment by the hour, week, or month generally points to an employer-employee relationship.

(13)   If a business ordinarily pays or re-imburses a worker's business and /or traveling expenses, usually indicates that the worker is an employee.

(14)   The fact that a business furnishes sufficient tools, materials, and equipment tends to show that the worker is an employee.

(15)   The fact that a worker invests in the facilities in which he performs his services would indicate that the worker is independent.

(16)   A worker who can realize a profit or suffer a loss as a result of his worker is generally an independent contractor.

(17)   A worker who can perform more than minimal services for a number of unrelated businesses is generally independent.

(18)   The facts that a worker makes his services available to the general public on a regular basis indicate independence.

(19)   The right to "fire" a worker by a business is a factor indicating the worker is an employee of the business.

(20)   If a worker has the "right" to end his relationship with a business at any time without incurring liability would indicate an employer-employee relationship.

Finally, any business wishes that the IRS to make the employee or independent contractor determination may file a request with the IRS using Form SS.

Any question, please give us a call at 415-381-0681, or visit our website at www.chochan.com.

Sincerely,

Cho F. Chan, CPA, Inc.