

Introduction

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If asked to distinguish an employee from an independent contractor, most people likely would say that an employee works for another person while an independent contractor works for himself or herself. Moreover, most people likely would feel confident that they could tell you whether a particular worker in a given situation is an employee or independent contractor — “I know it when I see it” type of reaction.

When it comes to taxes and worker-related benefits, however, a seemingly simple distinction has generated decades of controversy.

To assist individuals and businesses determine whether an individual is an employee or independent contractor, the Internal Revenue Service (“IRS”) developed Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*. Form SS-8 can be filed either by an individual or by a business.

When the IRS sends a business a Form SS-8 and asks the business to complete it, this generally means that an individual

who performed services for the business as an independent contractor believes he or she should have been classified as an employee. While the IRS sends the business the Form SS-8 to “get the business’s side of the story,” the reality is that the business likely is in the position of having to defend its classification of the worker as an independent contractor.

Many tax and other consequences result from classifying an individual as an employee rather than an independent contractor. In general, the financial consequences of a misclassification are far more significant for a business than for the individual. Thus, it is important for the business to understand what is at stake when completing the Form SS-8.

This Handbook is designed to assist businesses prepare a response to a Form SS-8 inquiry. Because the facts of each case will vary, this Handbook is not intended to eliminate the need for a tax professional experienced in employment tax matters to assist the business.