



# Tax Relief Advisers

## **Common Law Rules Separate Employees from Independent Contractors**

When determining a worker's status, the IRS applies common law rules to separate employees from independent contractors. Under the common law rules, treating a worker as an employee or an independent contractor originates from this

definition: one party, the principal, is legally responsible for the acts or omissions of another party, the agent. Ultimately, an employment relationship depends on the principal's right to direct and control the agent.

### **The Decision Is Based on Who Directs and Controls**

Following the common law rules, the tax regulations say an employer-employee relationship exists when the business for which the services are performed directs and controls the worker performing the services. The right to direct and control refers to both the result to be accomplished and the means by which that result is accomplished. Thus, an employee is subject to the control of the business both as to what will be done and as to how it will be done. The employer does not have to actually direct or control how the services are performed; it is sufficient if the business has the right to do so. If, however, an individual is subject to the control of another merely as to the result to be accomplished and not as to the means and methods for accomplishing the result, he is an independent contractor.

### **The IRS Considers All Relevant Facts**

To determine if an individual is an employee or an independent contractor under the common law rules, the IRS examines all relevant facts. The IRS generally considers whether:

- There is a right to direct or control how the worker performs the specific task (behavioral control);
- There is a right to direct or control how the business aspects of the worker's activities are conducted (financial control); and
- The parties intend to create an employment relationship (relationship of the parties.)

In summary, if you provide tools, require work to be performed in a certain manner, or at a certain time, the IRS is generally going to consider them an employee.