CONTRACTED SERVICES
&
INDEPENDENT CONTRACTORS:
SHOULD THEY REALLY BE EMPLOYEES?

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THE TRADITIONAL TEST
IRS Factors to Determine Worker Status

- Behavioral Control
- Financial Control
- Type of Relationship
Behavioral Control

- Specific Instruction – where, when, how, and in what order to do the work, which equipment and tools to use to do the work

- Degree of Instruction – specific and detailed looks like an employee
Behavioral Control

- Training Protocols and Procedures – any required training
- Evaluation – measuring how work is performed
FINANCIAL CONTROL

• Significant Investment

• Reimbursed Expenses

• Opportunity for Profit or Loss
FINANCIAL CONTROL

• Services Available to the Market

• Method of Payment
TYPE OF RELATIONSHIP

• Written Contracts
• Employee Benefits – contractors do not receive employee benefits
• Permanence of Relationship – indefinite or short defined term
TYPE OF RELATIONSHIP

• Services Relative to Activity of Business

• Characterization of Similar Relationships or past relationship with District
Key Activity of Business

• Recent emphasis on fourth factor of work that is “integral to the business of the employer”

• For schools, these are positions that work exclusively with students
KEY ACTIVITY OF BUSINESS

• Can include all positions that provide educational services

• Almost all teaching positions, including tutors and homebound teachers
KEY ACTIVITY OF BUSINESS

• Positions that have often been categorized as independent contractors in the past, such as Occupational Therapists, Physical Therapists, Speech Therapists, and Orientation and Mobility Specialists
DOL GUIDANCE
Integral: The extent to which the work performed by the worker is an integral part of the employer’s business – in schools, almost every position works with educating students, which is integral to the school;
DEPARTMENT OF LABOR GUIDANCE

• Profit or Loss: The worker’s opportunity for profit or loss, based on managerial skill and decision-making;
DOL (con’t…)

• **Investment:** The extent of the relative investments of each - the worker should have at least some risk for a loss in the venture, but also the worker’s investment should not be minor when compared to the employer’s investment.
DOL (CON’T…) 

• Special Skills: Whether the work performed requires special skills and initiative, such as business skills, judgment, and initiative.
DOL (CON’T…)

• Duration: The permanency of the relationship weighs into the analysis – if the employment relationship is permanent or indefinite, the DOL believes it is likely the worker is an employee.
DOL (CON’T…)

- **Control:** The degree of control exercised or retained by the employer. The worker has to control meaningful aspects of the work, pointing to a conclusion that the worker is actually running his own business.
EXAMPLES
An IRS Audit
WHY DOES THE IRS GET INVOLVED?

- Random Audit
- Selection for Audit
- Request by Third-Party
- Request by School District
PROCESS FOR IRS AUDIT

• Notice
• Document Review
• Interviews and On-Site Visit
PROCESS FOR IRS AUDIT

• Response from IRS with Recommendation

• Possible Negotiation or submission from District

• Final Report from IRS with Determinations
Responding to IRS Audit

• Produce all requested documents within deadlines provided

• Be prepared to explain reasons for employee classifications and accounting issues

• Consider using attorney to assist with investigation
MORE EXAMPLES
ADDITIONAL FEDERAL RESOURCES

• IRS website available to the public at www.irs.gov

• Division of the IRS - Federal, State and Local Governments (FSLG) to ensure governmental entities comply with federal employment tax laws
ADDITIONAL FEDERAL RESOURCES

• FSLG agents work with other groups, like TASBO, to help school districts comply with federal tax laws

• FSLG has many great resources online at http://www.irs.gov/govt/fslg/index.html