

EMPLOYEE OR INDEPENDENT CONTRACTOR?

An important question arises when a church retains a new person to perform a particular job for the church – is the person an employee or independent contractor? Serious tax consequences may result if a person is misclassified. Most persons retained to do the day to day work of any organization, including a church, are considered employees. The Internal Revenue Service (“IRS”) and the courts have determined that United Methodist clergy at the local church are to be classified as employees for income tax purposes.³⁷ Because of previous abuses and the general stance that persons who are working for an organization should be considered employees for income tax purposes, the IRS views independent contractor arrangements with suspicion and scrutiny.

A number of different tests have been promulgated in this area. The more prominent of these tests are outlined below.

1. The IRS Three Categories.

The IRS has stated that “evidence of the degree of control and independence fall into three common-law categories.”³⁸ The categories are “behavioral,” “financial,” and “type of relationship.” These three categories are intended to provide guidance in making a common law determination.

2. The Seven Factor Test from *Weber*.

One of the tests created via a court decision is the seven factors test from *Weber v. Commissioner*. This case determined the reporting status of United Methodist ministers. In concluding that United Methodist ministers are employees, the 4th Circuit adopted the decision of the Tax Court, which enumerated the seven factors:

1. The degree of control exercised by the principal over the details of the work;
2. Which party invests in the facilities used in the work;
3. The opportunity of the individual for profit or loss;
4. Whether or not the principal has the right to discharge the individual;
5. Whether the work is part of the principal’s regular business;
6. The permanency of the relationship; and

³⁷ See I.R.S. Publication 15-A 9-10, *Weber v. Commissioner*, 60 F.3d 1104 (4th Cir. 1995). Additionally, ministers “who are duly ordained, commissioned, or licensed by a religious body constituting a church or church denomination” and “...given the authority to conduct religious worship, perform sacerdotal functions, and administer ordinances and sacraments according to the prescribed tenets and practices of that religious organization” are exempt from federal income tax withholding and considered self-employed for social security purposes. Also See I.R.S. Publication 517.

³⁸<http://www.irs.gov/Businesses/Small-Businesses-&-Self-Employed/Independent-Contractor-%28Self-Employed%29-or-Employee>.

7. The relationship the parties believe they are creating.³⁹

3. “The Degree of Control.”

The important thing to understand in this context is that, regardless of the specific test that is applied, these determinations are ultimately about the amount and degree of control that a church organization – be it the local church, the annual conference, or the denomination – can exert over the individual. Indeed, the Tax Court in *Weber* devoted several pages of its decision to an analysis of the structure and rules of The United Methodist Church connection and of the restrictions on, and regulation of, United Methodist ministers by the *Discipline*.⁴⁰

Thus, the more control the church organization has over the individual, the more likely it is that the person is an employee. The following are examples of situations that may arise in a church setting. These examples are not to be treated as a conclusive determination regarding how the IRS would view such a situation. Instead, they are intended to illustrate how subtle differences in the relationship between the church entity and the individual (i.e., the amount of control afforded to the church entity) can bring about a different result.

- A church organist/music director, who holds the position of Minister of Music, works 35 hours a week, and works under the direction of the church, is most likely an employee.
- An organist who works for six area churches when their regular organist is sick or on vacation, and who offers services to other churches, is likely an independent contractor.
- A maintenance person who works 20 hours a week for the church on evenings, weekends, and after weddings and funerals, has a regular day job elsewhere, but does not have a facilities maintenance business, is likely an employee.
- A maintenance person who works for ABC Maintenance Company and is sent to various job locations, including the church, depending on the work schedule set by ABC, would likely be an employee of ABC Maintenance Company, with the company being considered an independent contractor.
- A painter who walks in off the street and offers to spend the next four weeks painting the church for a flat fee is likely an independent contractor.

4. Additional Resources.

Church organizations sometimes have fact scenarios that are somewhere in between these extremes. Each church organization needs to do its own analysis, in close consultation with legal counsel, for any “job” that is in a gray area. Church entities that consistently or frequently retain

³⁹ *Weber* at 1110.

⁴⁰ *Id.* at 1106-10.

the services of individuals in any gray area can use IRS Form SS-8. Through the submission of this Form, the IRS will conclusively determine the status of the individual. IRS Publication 15-A also contains guidance in this area.

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