

**Tax Review Checklist**

**EMPLOYEE VS. INDEPENDENT CONTRACTOR**

**20 Common Law Factors (rev. RUL 87-41):**

		Yes	No	N/A	I/C
1	JHHS EMPLOYEE	Are you currently an employee of JHHS or any of its affiliates?			
2	JHHS EMPLOYEE	Have you ever been employed by JHHS or any of its affiliates? If so, when?			
3	INSTRUCTIONS	Is worker required to comply with other persons' instructions about when, where, and how to perform work? (Control is present if the right to instruct exists, whether or not exercised.)			N
4	TRAINING	Is worker required to 1) train with an experienced worker, 2) attend training meetings, or by some other means receive training as to the method or manner in which work is to be done? (Required training would indicate control. Independent contractors ordinarily rely upon their own resources for training.)			N
5	INTEGRATION	Are the worker's services integral to the operation of the business? (The more integrated the services, the more likely the person is subject to direction and control.)			N
6	PERSONAL RENDITION OF SERVICES	Is worker required to perform the services personally? (If the worker has the right to hire a substitute, the employer is probably more interested in the results, rather than the methods.)			N
7	HIRING, SUPERVISING, & PAYMENT OF ASSISTANTS	Does the employer generally control hiring, supervising, and payment of assistants? (Where a worker controls these activities under contract to obtain result only indicates I/C status.)			N
8	CONTINUING RELATIONSHIP	Does worker perform services under a continuing relationship? (Continuing relationship can include services performed at frequently recurring, though somewhat irregular intervals and would indicate employee status.)			N
9	SET HOURS OF WORK	Does the person work set hours established by employer? (Set hours would indicate control, whereas flexibility within certain necessary time constraints would not.)			N
10	FULL TIME REQUIRED	Is worker required to devote substantially full time to the business? (Full time employment impliedly restricts other gainful employment and so would be control over worker's time.)			N
11	EMPLOYER'S PREMISES	Does worker perform services on the employer' premises or other specific place as required by employer? (Working on employer premises implies control.)			N

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12	ORDER OR SEQUENCE SET	Is worker required to perform services in the order or sequence set by the employer? (The right to do so may indicate control, even if not exercised.)	_____	_____	_____	<u>N</u>
12	REPORTS REQUIRED	Is worker required to submit regular oral or written reports? (Reports requiring accountability for actions indicates a degree of control.)	_____	_____	_____	<u>N</u>
13	PAYMENT BY HOUR, WEEK OR MONTH	Is worker paid by the hour, week or month? (This usually indicates employee status, whereas payment on a commission or by the job indicates I/C.)	_____	_____	_____	<u>N</u>
14	EXPENSE ACCOUNT	Does the employer pay the worker's business and/or travel expenses? (This would indicate some degree of control over expenses.)	_____	_____	_____	<u>N</u>
15	TOOLS/MATLS SUPPLIED	Does worker use tools, materials or equipment furnished by the employer? (This would indicate control over the worker.)	_____	_____	_____	<u>N</u>
16	FACILITIES FURNISHED	Are all necessary facilities for the worker furnished by the employer? (A significant investment in facilities by the worker tends to show I/C status.)	_____	_____	_____	<u>N</u>
17	RISK OF LOSS	Is the worker in a position to realize a profit or suffer a loss as a result of services performed? (If so, they are generally I/Cs.)	_____	_____	_____	<u>Y</u>
18	NUMBERS OF EMPLOYERS	Does person work for a number of persons or firms at the same time? (If so, it usually indicates I/C status.)	_____	_____	_____	<u>Y</u>
19	AVAILABILITY TO GENERAL PUBLIC	Are the worker's services available to the general public? (Where worker's services are available to general public on a regular and consistent basis indicates I/C status.)	_____	_____	_____	<u>Y</u>
20	RIGHT TO DISCHARGE	Does the employer have the right to discharge the worker? (An employer can exercise control through the threat of dismissal, whereas I/Cs cannot be fired so long as the contract specifications are met.)	_____	_____	_____	<u>N</u>
21	RIGHT TO TERMINATE	Does worker have the right to end the employment relationship at any time without incurring liability? (Employees do, whereas I/Cs usually contract to complete a specific job.)	_____	_____	_____	<u>N</u>

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**Physician – Specific Factors (from IRS Audit Guidelines):**

	Yes	No	N/A	I/C
Does the physician have a private practice?	_____	_____	_____	<u>Y</u>
Does the hospital pay straight wage to physicians?	_____	_____	_____	<u>N</u>
Does the hospital provide supplies and professional support staff?	_____	_____	_____	<u>N</u>
Does the hospital bill for physician services?	_____	_____	_____	<u>N</u>
Do the hospital and physician divide the physician fees on a % basis?	_____	_____	_____	<u>N</u>
Does the hospital regulate or have the right to control the physician?	_____	_____	_____	<u>N</u>
Is the physician required to be on duty during specified hours?	_____	_____	_____	<u>N</u>
Does the physician’s uniform bear the hospitals name or insignia?	_____	_____	_____	<u>N</u>
Does the hospital pay for the physician’s malpractice insurance? (If yes, there may be a private inurement.)	_____	_____	_____	<u>N</u>
Is treatment of worker as employee or I/C inconsistent as far as payment of compensation and benefits (e.g. physician may be treated as an employee for some benefits, such as the 403 (b) tax sheltered annuity, but as an I/C for compensation)?	_____	_____	_____	<u>N</u>

Test Criteria

- CONTROL
- COMPENSATION
- EXPENSES
- INTENTION OF PARTIES
- EMPLOYEE BENEFITS
- MALPRACTICE INSURANCE
- TRAINING SKILL
- ABILITY TO HIRE/FIRE

Safe Haven Exception

RELIEF AVAILABLE ONLY IF:

- Consistent treatment of worker and other comparable workers is used by taxpayer since December 31, 1977.
- Taxpayer filed tax forms
- Taxpayer has a reasonable basis for treating worker as an I/C.