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Many businesses pay two different kinds of workers: contractors and regular employees. Come tax time, many businesses face worker classification law questions. How do they know how employees are classified for tax purposes? How do these classifications affect which taxes the employer pays?

A New Jersey tax lawyer can answer such questions and take away the guesswork for you.

Independent contractors can include dentists, accountants, freelance writers and NJ tax lawyers. In general, the person who pays the independent contractor is allowed to dictate the results of the work (i.e., the person paying a freelance writer may demand a 1,000-word article on cat taxidermy) but not the process of the work (i.e. the person paying a freelance writer has no say in whether the article is written at 3 a.m. while listening to Lady Gaga). In general, independent contractors are subject to self-employment tax.

An employee, on the other hand, is anyone who performs services for you if you have say in what work will be done and how and when it will be done. The key tax difference is, for an employee, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment taxes.

There also exist statutory employees and nonemployees. Direct sellers and real estate agents are always treated as self-employed for federal, tax-related purposes. On the other hand, other workers â€“ including drivers who deliver food products or laundry (if they are your agent or paid on commission), full-time life insurance agents, pieceworkers and full-time traveling salesmen -- are always treated as employees. For Social Security and Medicare purposes, the statutory employee is considered an employee if:

â—• The contract states or implies that the person is the primary provider of services;

â—• They do not have a substantial investment in supplies to complete the job; and

â—• The services are performed on a continuing basis for the same payer.

Whether a statutory employee or nonemployee, follow the tax rules of the independent contractor or the employee.

If you treat a worker as an independent contractor when they are actually an employee, you may be held liable for the employment taxes of that worker as part of your New Jersey business taxes. However, if you have a reasonable basis for not treating an employee as an employee, you may be able to get relief. Consult your NJ tax lawyer. Misclassified workers may file a form to report the Social Security and Medicare taxes uncollected because of their employer; this may even result in a civil tax audit.

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Thorn Law Group, which was founded by tax attorney Kevin E. Thorn, is an experienced law firm whose mission is to successfully represent you in sensitive tax controversies. Thorn Law Group assists clients all over the U.S. and internationally.

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