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VIEWPOINT

Worker Classification Issue No Laughing Matter

My kudos to my colleagues Soled, Raby and Lurie for expanding the discussions on worker classification. All discussion is helpful, but enough is enough. Someone has to put an end to the double entendres resulting from Jay Soled's initial writing of the *Marlar* case. The worker classification issue is no laughing matter. It has become even more serious with the Department of Labor's recent action in the *Time Warner* case to reenter the worker classification controversy. Bizarrely, and in direct contradiction of IRS policy, the Department of Labor seeks to include independent contractors in employee benefit plans. In juxtaposition, the IRS's policy is, in fact, so strict about this issue that in the first market segment understanding (MSU) issued by the IRS for the entertainment industry they made being a member of the screen actors guild union one of the first three critical factors that automatically fails the independent contractor test. Small businesses take notice. We now have two federal bureaucracies with diametrically opposing viewpoints and definitions for the definition of employee and in opposite independent contractor. The Department of Labor, in contradiction to the IRS, asserts in the *Time Warner* case that an independent contractor should be included in an employee benefit plan. Can it get any more screwed up? With social security deficits and the never ending bias for coddling the worker by the liberal left is nothing less than the socialization of the entire work force the goal of Kennedy, Dodd and the Department of Labor?

I was on the STAWRS Committee (Standard Tax and Wage Reporting System) dealing with the harmonized wage code. It seemed that every state's unemployment compensation department had different definitions of employee. STAWRS has actually catalogued the states definitions so at a minimum one can have a starting point to achieve harmonization. As the old saying goes, however, be careful what you wish for. STAWRS was populated by state and unemployment compensation commissioners who are staunchly against independent contractor status. My guess is if a harmonized wage code was ever passed, it would be so restrictive that independent contractor status would become as extinct as the dinosaur. ■

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