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LETTER TO THE EDITOR

Raby Misstepped in Spouse Employment Article

Dear Editor:

It is not helpful that otherwise knowledgeable tax writers perpetuate the IRS myth that self-employed individuals and small businesses engage in massive noncompliance. However, that is exactly what my good friend Bill Raby did in his recent *Tax Practice* Article "'Spouse Employment Contract' — Loophole or Noose?" (*Tax Practice*, Mar. 15, 1999, p. 327.)

The self-employed suffer from so much image bashing already, and this comment will allow the government (IRS, Dept. of Labor, etc.) to continue to pursue their aggressive tactics against small businesses. Can this be shades of financial status auditing all over again?

Bill also suggests that audits will be more intrusive because of the new law that shifts the burden of proof to the IRS. Nothing could be further from the truth. If the taxpayer complies with reasonable requests for information, the burden of proof shifts. What is a reasonable request? Let's look at independent contractor law, which states that the taxpayer must make a *prima facie* case to the government before the burden of proof shifts to the government. "*Prima facie*" is a low level test. It means on it's face — almost a common sense approach. If the IRS wants to fight over the definition of reasonable requests — so be it. I believe the taxpayer who offers *prima facie* proof in an audit will win overwhelmingly should the IRS dispute the evidence proffered.

Taxpayers must remember — IRS fishing expeditions are not allowed. Taxpayers are required to substantiate their deductions using the *prima facie* standard. However, the taxpayer need not stand in fear that the very law that is designed to level the playing field (the shift of the burden of proof to the IRS) will boomerang and produce financial status-type intrusion audits. That is not what Congress intended, and the American public should not stand for it.

Sincerely,

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