



## letters to the editor

### Sheppard Stuck in Time Warp, Says Practitioner

To the Editor:

Lee Sheppard's attack on independent contractors (*Tax Notes*, May 31, 1999, p. 1282) reminds me of something out of the first "Austin Powers" movie: we're in a '90s workplace but she's still stuck in a '60s mentality. She's oblivious to the U.S. and global forces changing the workplace relationship. Take Thailand or Mexico or any other country where the emphasis on entrepreneurship is going full tilt. Most 1990s economists (and some of us since the 1970s) have been espousing the benefits of free markets, independence, and entrepreneurship. In fact, the very people she thinks can't handle this independence (the low-level worker, to use her term) are the very ones who in many cases see working as an independent contractor as the first step in a career of entrepreneurship. As our culture turns more and more to immigrants, they are grabbing the opportunities that propel them into the next wealthy class in America. In fact, a recent *Investors Business Daily* article stated that 7.8 percent of the American workforce now view themselves as self-employed. That's almost equal to the amount of workers who belong to unions (estimated at 11 percent according to reports). Watch out Lee, the entrepreneurs are taking over! But so much for being stuck in the past. Let's look at some of the other misguided and misinformed statements Lee Sheppard makes in her article.

I'm not sure whether Sheppard suffers from a lack of understanding about the mathematics of withholding or a distinct anti-employer, pro-IRS bias. She states, for example, "Employers know they can bolster their profit margins by not withholding income and employment taxes on their service employees wages . . ." Last time I checked the employee's gross wages are reduced by withholding resulting in a smaller check to the employer. The gross wage would be the equivalent of what a gross payment would be to an independent contractor. The employer merely acts as an agent for the government. Withholding taxes from an employee, assuming the same amount is paid to the employee and independent contractor, has no effect on profit margins. In fact, using an independent contractor is more likely to decrease profit margins since the independent contractor usually requires a higher payment to cover their cost of FICA taxes. Withholding taxes are only a means to keep the Treasury flush. It should not impede the objective arm's-length business relationship between the workers and the business.

Can you imagine anyone saying the IRS has been "Coerced into not enforcing the law"? Planet Venus must have much different case law than Planet Earth. The courts are littered with cases of aggressive, punitive IRS agents costing taxpayers hundreds of thousands of dollars and literally putting them out of business. My 20+ years of studying case law can attest to this! But let's get to the nub of the issue — what's the problem with letting workers and business decide how they want their relationship to be? An *Investors Business Daily* article from June 9, 1999, has the heading "Free lance workers find help on the Internet." Is she clueless to the changes in the marketplace? To that end, I have always proposed a simple two-step process for determining the relationship between the worker and business. My proposal has always been the following:

- (1) There must be a written agreement between the worker and business agreeing to independent contractor status.
- (2) All 1099s must be filed.

Of course, Lee knows that when 1099s are filed, there is close to 96 percent compliance with reporting, which contradicts some of her other comments: "Some employees relish the opportunity for tax evasion," or "Bond's statement 'that taxes . . . all come[s] out in the wash' — shows that he is blissfully unaware that a tax not withheld is likely to go uncollected."

A more enlightened approach would be, of course, to question why it matters whether one is classified as an employee or independent contractor. For example, why should employees receive tax-free fringe benefits while independent contractors cannot? The answer is, of course, that all workers should be allowed to use medical savings accounts. That puts the fringe benefit issue where it belongs — in the workers' pocket to do with it how he chooses. Same with withholding. This is just a mechanism to get money to the government. It should have no impact on worker status. In fact, Rep. Dick Armey, R-Texas, proposed that the whole process change whereby taxpayers remit their taxes once a month to the government, as opposed to the taxes being withheld. Just think, the day might come where workers make their own economic decisions without the government feeling the need to "protect" the worker. Embrace the change, Lee, this is 1999 — not the 1960s.

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