

# Is IRS Making Independent Contractor Treatment Even Harder?

<http://www.forbes.com/sites/robertwood/2011/09/19/is-irs-making-independent-contractor-treatment-even-harder/>

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It's no secret that the IRS takes a dim view of employees masquerading as "independent contractors." In the IRS view, many employers thrust this treatment on workers so they won't have to pay payroll taxes. Taxes are immediate when paid via payroll withholding.

The IRS has a harder time collecting taxes from individuals. If the worker gets a gross check and a Form 1099, the IRS may never see the money. See [The Truth About Forms 1099](#). Thus, the IRS has an overwhelming penchant to come out in favor of withholding and employment tax.

Not sure? You can ask the IRS to rule whether a worker is an independent contractor or employee. But remember, the old adage, "Don't ask the question if you can't stand the answer." The worker or the company can ask the IRS by submitting an Form SS-8—a streamlined ruling form.

Any worker or company can fill one out. And unlike most other rulings from the IRS where you have to pay a fee, this one is free. But most forms submitted are by workers—about 90 percent. And most forms produce an IRS ruling that the worker is an employee. In fact, in one recent year, 72 percent of Form SS-8 requests the IRS received produced rulings saying: "employee." Twenty five percent were closed without ruling, and only 3 percent were ruled independent contractors!

Lately, the IRS has revamped its SS-8 Form. The revised Form SS-8 and its instructions can be viewed at <http://www.irs.gov/pub/irs-pdf/fss8.pdf>.

The newest form requests additional contact information from employer and worker, including fax numbers, e-mail addresses, and website address. A new line asks if the worker was paid by more than one entity because of a sale, merger, acquisition, or reorganization.

There are new questions whether the worker leases equipment, space, or a facility. Another asks whether the worker sets pay for services or products. Even more important, the form asks how the company tells the public about the worker. Is it really clear to everyone that this person does not work as an employee and is independent?

These changes will be significant in some cases. Of course, worker status questions often involve a polyplot of factors, including:

- The amount of control exercised by the company;
- Which party pays for work facilities;
- The worker's opportunity for profit or loss;
- Whether the company can fire the worker;
- Whether the work is part of the company's regular business;
- The permanency of the relationship;
- What relationship the parties believed they had; and
- Whether employee benefits are provided.

And more, much more.

For more on independent contractor issues, see:

**The Truth About IRS Forms 1099** (09/29/2010)

<http://www.forbes.com/sites/robertwood/2010/09/29/the-truth-about-irs-forms-1009/>

**Ten Things You Should Know About 1099s** (01/27/2010)

<http://www.forbes.com/2010/01/27/irs-1099-computer-matching-audits-personal-finance-robert-wood.html>

**Winning Independent Contractor Battles** (08/29/2011)

<http://www.forbes.com/sites/robertwood/2011/08/29/winning-independent-contractor-battles/>

**IRS Narrows Independent Contractor Relief** (08/16/2011)

<http://www.forbes.com/sites/robertwood/2011/08/16/irs-narrows-independent-contractor-relief/>