

Tax Court Finds Masonry Contractors to be “Employees”

1 min read

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In this case, the employer, an S corporation that operated a masonry subcontracting business, treated its workers as independent contractors and not employees. The workers were hired on a per-job basis, brought their own tools to the jobs, were free to work for other employers and were paid on a piecework basis in cash. The payments made to the workers were often not adequately recorded and minimal documentation existed. The employer was then selected for an employment tax audit through which the Internal Revenue Service (IRS) determined the workers should have been categorized as employees. As a result it determined the employer owed employment taxes it should have originally withheld, along with penalties and interest on these amounts and penalties for the failure to file returns and remit these amounts.

The employer then brought suit in Tax Court to contest the IRS’s classification of the workers as employees and the amount assessed for failure to remit employment taxes. The Tax Court applied the seven employee versus independent contractor tests and held that the workers constituted employees. Specifically, the Tax Court found that consistent with the employer-employee relationship, the employer had the authority to tell the workers what jobs they were to do, and how and when to perform their work. Though the workers did bring their own tools to work, none had a significant investment in the facilities, and they had no opportunity for profit or loss. Further, the Court noted, the employer had the right to fire the workers who were an integral part of its business.

The Court did recognize that the fact that the workers were engaged by a per-job basis and were free to work elsewhere supported the independent contractor classification, however, this one factor amongst the others did not support the workers’ classification as independent contractors.

Based on the Tax Court’s ruling, employers should be aware that while an employment relationship may be informal and on a per-job basis, the determination of employment status is based on several factors, not one of which is dispositive.

For more information read *Atlantic Coast Masonry, Inc.*

Topics

IRS, Independent Contractors