

Special Edition - Alert

Will Your Owner Operators Put You Out of Business?

Over the years, the trucking industry has been divided on assets versus non asset based businesses:

- Some trucking companies focused on the independent operator as being an integral part of their operations.
- The theory was that, a trucking company could adjust to the marketplace quicker since they didn't own the independent contractor equipment; less capital intensive.

In order to qualify for an independent contractor status:

- There is a 20 point "control test".
- Transportation attorney's advise their clients on how to meet these requirements;
- There appeared to be a clear distinction in the classification of an independent contractor versus a company driver, and;
- Part of the 20 point control test was to comply with the Safe Harbor Treatment Act.

Well, that's about to change. The reason; money!

- State and Federal revenues are falling short of their estimates.
- There's a substantial amount of taxes that have not been collected due to the independent owner operator versus employee status, and;
- There's an increased aggressive posture taken by the Federal Government and State Governments, particularly in the states of New York, Illinois, Texas, Oklahoma, New Jersey, Connecticut, Massachusetts, California, Michigan and Georgia.

Last year, there were 72 bills in the state legislature that dealt specifically with workers compensation and owner operators. Many states have set up special task forces to look for opportunities to reclassify independent contractors to employees so that the states can collect unemployment taxes and arrearages.

In conjunction with the above, insurance companies are auditing trucking companies with owner operators. For example; American International Group, Canal, Hartford Insurance Group and Liberty Mutual, have post audited many trucking companies in reference to attempting to reclassify the owner operators as employees so they can generate additional insurance premiums.

Can you believe that the government is encouraging "whistle blowing" and they're protecting whistle blowers so that the government can obtain additional revenue. For example; did you know that if an independent contractor fills out a form claiming employee status, he is provided whistle blowing protection and the IRS is notified to investigate the alleged employer?

MANAGEMENT CONSULTING
OPERATIONAL REVIEWS
DIVESTITURES
ACQUISITIONS
MERGERS

THE AHERN ADVISORY

in this issue

Will your owner operators put you out of business?



Ahern & Associates, Ltd.

Accredited Member
National Bureau of Certified
Consultants Inc.

April 28, 2009

In fact, Obama, Durben, Kennedy, introduced a bill entitled “The Independent Proper Classification Act of 2007”;

- This was intended to protect government revenue and American workers from unscrupulous employers.
- It would “roll back” the Safe Harbor protection, and;
- **It provided owner operators whistle blowing protection and attorney’s fees.**

In other words, a disgruntled owner operator can now trigger an audit. Due to the substantial financial strain on our economy, there’s been congressional action and demands by Congress that;

- IRS investigate and punish employers who misclassify independent contractors, and;
- There’s a creation of inter-agency task forces that work with the Department of Labor.

My point; the government is out of money;

- Businesses are going to be directly responsible for paying the burden of this financial fiasco and companies employing independent contractors are targets for additional revenue streams.

There are many things that you can do to protect yourself; of significant risk is the treating of occupational/accident insurance policies for owner operators versus workers compensation. Recently, my firm had an opportunity to review an alternative program from a PEO that offers traditional workers compensation for independent contractors;

- This program helps diffuse many of my concerns about the changes in our government.

I was intrigued by this particular program because the independent contractor is required to sign a contract. The contract states;

- “I’m an independent contractor”.
- “I elect to receive workers compensation benefits authorized in the state in which the company is domiciled”.
- “I understand that the coverage is only applicable while I’m contracted and operating under the authority of the motor carrier”.
- **“I certify that I own my own tractor where it’s under long term contract, in my name, or I am in a partnership with a person, etc.”**

In other words, the owner operator is stating that;

- He’s an independent businessman.
- He has specifically requested the carrier to provide workers compensation while he’s under their dispatch.
- **He certifies that he owns his own tractor.**
- **He certifies that he’s an independent contractor and this makes it much more difficult for any regulatory body, whether it’s IRS or the government, to attack your company.**

I would encourage our readers to review these types of programs if you utilize independent contractors. If any of you are interested, I would be more than happy to provide you our source for contact.

In closing, these are difficult times and these are times that necessitate change in order to stay in business.

QUOTE OF THE WEEK: “If you really want to do something, you will find a way; if you don’t, you will find an excuse.”