

# Music Teachers Status



A "Point-Counterpoint" Panel Discussion  
*moderated by*

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The  
“Pros & Cons”  
between  
classifying  
music teachers  
as  
“Employees”  
VS.  
“Independent  
Contractors”

# Classified as “Employees”



## *Pros –*

- Control over their work schedule
- Control over their teaching methods
- Control over their teaching rates
- Control over their compensation & benefits offered
- Never have an issue with any tax authority

## *Cons –*

- Significantly “higher” worker costs, including payroll and unemployment taxes, health, liability and workers comp insurance, and retirement benefits (Remember – you can’t discriminate between owners and employees, or between employees, with regard to employment benefits)

# Classified as “Independent Contractors”



## *Pros –*

- Complete elimination of any payroll taxes
- Complete elimination of any insurance costs
- Complete elimination of any retirement benefits
- Complete elimination of employment benefits
- Complete elimination of payroll accounting
- Minimized tax reporting (1099-MISC at year-end)

## *Cons –*

- No control over their work schedule
- No control over their teaching methods
- No control over their teaching rates

"This is a  
no-brainer...  
of course I want  
to treat my  
music teachers  
as independent  
contractors!!"



# BEWARE:



Incorrect classification can cause you to be held responsible for...

- All "back" federal & state payroll taxes
- All "back" unemployment taxes
- All "back" employment benefits



# IRS Guidelines



- In 1987, the IRS issues the “20 Factor Test” under Revenue Ruling 87-14
- Rules were strictly (and unfairly) enforced in court cases; the IRS would focus on the violation of 1 or 2 rules to win its case against an employer
- In 1996, the IRS issued a new set of guidelines; directed agents to focus on the “overall” set of circumstances, rather than any one or two factors

# The 20 factor test ...





# The 20 Factors:



1. Must follow instructions?
2. Receives training?
3. Provide unique service?
4. Service rendered personally?
5. Hire, supervise, pay assistants?
6. Continuous relationship?

# The 20 Factors:



7. Set hours of work?
8. Required to work full-time?
9. Work on employer's premises?
10. Must follow task sequence?
11. Provide oral/written reports?
12. Paid by hourly, weekly, monthly?
13. Paid for bus./training expenses?

# The 20 Factors:



- 14. Furnished tools/equipment?
- 15. Invests in tools or facility?
- 16. Bears the cost of losses?
- 17. Major source of income?
- 18. Services available to public?
- 19. Can be discharged?
- 20. Right to end relationship?

# Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding

OMB No. 1545-0004

Name of firm (or person) for whom the worker performed services <u>Clients of Friedman, Kannerberg &amp; Co., P.C.</u>		Worker's name	
Firm's address (include street address, apt. or suite no., city, state, and ZIP code) <u>91 South Main Street</u> <u>West Hartford, CT 06107</u>		Worker's address (include street address, apt. or suite no., city, state, and ZIP code)	
Trade name		Telephone number (include area code) ( )	Worker's social security number : :
Telephone number (include area code) <u>(860) 521-3790</u>	Firm's employer identification number <u>06-1146038</u>	Worker's employer identification number (if any) :	

If the worker is paid by a firm other than the one listed on this form for these services, enter the name, address, and employer identification number of the payer.

## Important Information Needed To Process Your Request

We must have your permission to disclose your name and the information on this form and any attachments to other parties involved with this request. Do we have your permission to disclose this information? ☒ Yes ☐ No  
If you answered "No" or did not mark a box, we will not process your request and will not issue a determination.

You must answer ALL items OR mark them "Unknown" or "Does not apply." If you need more space, attach another sheet.

- A This form is being completed by: ☒ Firm ☐ Worker; for services performed \_\_\_\_\_ to \_\_\_\_\_  
(beginning date) (ending date)
- B Explain your reason(s) for filing this form (e.g., you received a bill from the IRS, you believe you received a Form 1099 or Form W-2 erroneously, you are unable to get worker's compensation benefits, you were audited or are being audited by the IRS).  
We are a CPA firm that specializes in the music retail industry. In order to better advise our clients with employee vs. independent contractor issues, we are requesting an informational letter based on a typical scenario routinely presented to us by our music retailing clients.
- C Total number of workers who performed or are performing the same or similar services Varies (1-50)
- D How did the worker obtain the job? ☐ Application ☐ Bid ☐ Employment Agency ☒ Other (specify) Networking
- E Attach copies of all supporting documentation (contracts, invoices, memos, Forms W-2, Forms 1099, IRS closing agreements, IRS rulings, etc.). In addition, please inform us of any current or past litigation concerning the worker's status. If no income reporting forms (Form 1099-MISC or W-2) were furnished to the worker, enter the amount of income earned for the year(s) at issue \$ N/A
- F Describe the firm's business.  
Music Retail - sale and rental of musical instruments, equipment and print  
music, as well as music lessons/instruction services.
- G Describe the work done by the worker and provide the worker's job title.  
Music Teacher - offers musical instruction to students, who are also retail  
customers of the music retail store.



# IRS Guidance



In a 1970 Court Case, the IRS challenged the worker status of music teachers at a music conservatory. These teachers taught students in accordance with a **curriculum** provided by the school, as well as provided **private instruction** to students as part of a lesson program administered by the school.

# IRS Guidance



- Upon completion of their audit, the IRS issued Revenue Ruling 70-338 which stated *"Teachers instructing regular classes at a music conservatory for regular remuneration are **employees** of the school; however, teachers who instruct pupils in private lessons in return for a percentage of the fees collected by the conservatory are **not employees**."*
- Essentially, the determining issue was "who" had **control** over "how" the student was taught

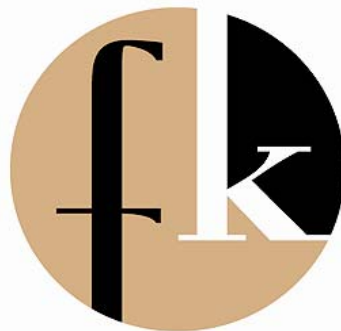


# Some Good Advice



To best assure a favorable outcome of an IRS or labor dept audit, employers should:

- Have “written” contracts or arrangements with their music teachers
- Have an attorney review all documents
- If need be, request assistance from the IRS in determining status by filing a Federal Form SS-8



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and company pc

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