INDEPENDENT CONTRACTOR SAFE HARBOR RULES

It is possible to escape the consequences of misclassifying a worker as an independent contractor instead of an employee under what are known as the Section 530 safe haven rules. In order to qualify for such protection, the business must have (i) a "reasonable basis" for believing it was appropriate to treat the person in question as an independent contractor instead of an employee, (ii) annually filed Form 1099 for the person and consistently treated the person as an independent contractor in connection with any other filing requirements (e.g., unemployment tax returns), and (iii) treated all other similarly situated workers in the same manner, i.e., as independent contractors. A "reasonable basis" for treating a person as an independent contractor may be anything that the IRS would consider to be such a basis, but it has specifically found that such a basis would exist if there were (i) judicial or other precedent for such treatment by the employer, (ii) a past IRS audit of the business in which no tax assessment was made by it for the treatment of similarly situated workers as independent contractors, or (iii) a long-standing recognized practice in a "significant segment" (at least 25%) the industry in question of treating similarly situated workers as independent contractors. In 1996, the Internal Revenue Code was changed to put the burden of proving no "reasonable basis" existed for such treatment on the IRS after the taxpayer makes an initial showing that such a basis did exist.

The IRS has issued regulations and rulings regarding the status of certain types of workers as employees or independent contractors. Under these regulations and rulings, full time life insurance salesmen are classified as employees. Conversely, real estate agents are classified as independent contractors. Unfortunately, no such regulations or rulings address whether a property and casualty insurance agent is an employee or independent contractor.