

Special Edition

Independent Contractor Crack Down

Several months ago, I indicated that the state of Arkansas issued a devastating ruling against Hurricane Express, located in Springdale, Arkansas;

- At the time, Hurricane Express utilized independent contractors.
- The court deemed the independent contractors to be, in fact, employees, and;
- The ruling was appealed to the Arkansas Supreme Court.

Unfortunately, the Arkansas Supreme Court has confirmed the Arkansas Court of Appeals ruling that deemed truck drivers leased to Hurricane Express were, in fact, employees;

- This ruling is a potential “lock out”, in Arkansas, for anyone who wants to be an independent contractor.
- The ruling cites the federal regulations for leased drivers as evidence that drivers are employees, contradicting the intent of the federal regulations that set forth parameters for leasing drivers.
- This is a horrendous court ruling that has now been confirmed by the Arkansas Supreme Court.

There is no question that all Arkansas based trucking companies with lease drivers, now have exposures, regardless of the language in their lease agreements and regardless of any IRS clearances. This ruling can be broadly interpreted by state auditors, seeking to reclassify contractors as employees. As most of you know, I have written numerous articles entitled “Independent Contractors Under Siege”;

- I’ve indicated that the 20 point “control test” is being thrown out the window.
- I’ve suggested that companies look for alternative ways to distance themselves from the exposure without changing their model, and;
- I’ve offered alternatives, so that a company does not become a target by IRS and/or state regulatory concerns.

Recently, I indicated that the Internal Revenue Service (in 37 states) are cracking down on companies and this is only the beginning. Anybody utilizing independent contractors should be concerned. This is a devastating ruling for trucking companies operating in the state of Arkansas and this is only the “tip of the iceberg”.

The Arkansas ruling supports what I’ve been stating;

- Any company utilizing independent contractors has an exposure, and;
- To even begin to believe that any carrier utilizing independent contractors doesn’t have an exposure, “boggles” my mind.

Anybody that believes that they have no exposure, utilizing independent contractors, should demand (not request), but demand an opinion letter from their law firm. In that opinion letter;

- The law firm should state, specifically, what exposures (if any) the carrier has, and;

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- The law firm should state, specifically, what the ramifications could be.

These actions are becoming an everyday occurrence. When the country is out of money, they look for sources to generate income. When states are out of money, they find a source that generates income. Nobody, and I mean nobody, is exempt from such scrutiny.

IRS just announced that they are beginning their planned employment tax audits beginning this month. 2,000 audits will be conducted each year for the next 3 years. IRS is targeting small businesses! What a surprise. Pick on someone who can't defend themselves. IRS agents have just completed a special training program to prepare for these exams. Get ready; here they come!

QUOTE OF THE WEEK:

“Wise men understand that every day is a day of reckoning”. (Author Unknown)