

An Empirical Assist In Resolving The Classification Dilemma Of Workers As Either Employees Or Independent Contractors

Teresa J. Webb, University of Arkansas
Ted D. Englebrecht, Louisiana Tech University
Timothy O. Bisping, University of Central Arkansas
Steven A. Hanke, Louisiana Tech University

ABSTRACT

The classification of workers as "employees" or "independent contractors" is important because the employer's legal responsibilities vary depending upon the nature of the working relationship. For federal tax purposes, the term "employee" is not clearly defined. However, the model developed in this study is able to correctly classify 96.6 percent of the judicial decisions (1980-2005) involving the status of a worker as either an employee or independent contractor. Also, the model demonstrates stability over time and between judicial venues.

INTRODUCTION

Approximately one out of ten workers, or about thirteen million people, work under alternative employment arrangements (U.S. Department of Labor, 2001). The nontraditional employee has many names including "contingent worker," "outsourced employee," "telecommuter," "leased employee," "contract worker," "temporary worker," "casual worker," "freelancer," and "independent contractor." Despite the numerous "real world" classifications of employment relationships, for purposes of federal law, only two classifications of workers are typically utilized: the common law employee and the independent contractor.¹

Correctly classifying a worker is important because the employer's legal responsibilities depend upon the nature of the employment relationship. On the other hand, incorrectly classifying a worker can result in significant employer liability pursuant to both federal tax and labor laws. Particularly, the reclassification of workers from independent contractor status to employee status can result in retroactive employer liability for employment taxes, fines and penalties, under-funded pensions and fringe benefits, and lawsuits arising from violations of labor law. Moreover, the classification of workers has important financial statement implications if any of the aforementioned liabilities are "probable contingent liabilities" as defined in SFAS 5 (Everett, Spindle, and Turman, 1995).

Even though these rules are labor and tax snares for small business owners, large businesses can also fall prey to these ambiguous classifications. In fact, the case of *Vizcaino v. Microsoft* (78 AFTR 2d 96-6690 (9th Cir. 1996)) highlights the effect of potential consequences of worker misclassification. Microsoft supplemented its staff of regular employees with contract employees that the company classified as independent contractors. In 1990, the IRS determined that based on the common law test of control, several hundred contractors were employees. Microsoft conceded to the reclassification of workers. Subsequently, a group of the reclassified workers filed a class action lawsuit under ERISA and Washington state law seeking inclusion, as employees, in the company's retirement and stock purchase plans. The courts held that, subject to certain restrictions, the misclassified workers were entitled to participate in the employee benefit plans. Microsoft settled the case in December of 2000 at a cost of \$97

million (*Donna Vizcaino, et al. v. Microsoft*, Class Action Settlement Agreement 2000,15).

The primary objective of this study is to identify factors used by the judiciary, as final interpreter of the law, in distinguishing between employees and independent contractors for federal tax purposes. Prior empirical research has examined the variables considered by Federal District Courts and Court of Claims (now U.S. Court of Federal Claims) in employee versus independent contractor cases (Stewart, 1982).² However, no empirical research has been conducted in this area in over twenty-five years. Also during this time, the employment landscape has changed dramatically, and the Internal Revenue Service (hereafter IRS or Service) has issued significant guidance (e.g., Revenue Ruling 87-41; Worker Classification Training Materials). Further, no empirical research on this issue has been conducted considering decisions rendered by the U.S. Tax Court, which is the most frequent venue for employment tax cases.

The remainder of this research inquiry is organized as follows. The next section of this study focuses on background information and a selected literature review. This is followed by a third section which includes a discussion of our methodology. In the last two sections, we present and analyze the results of our research study including limitations and extensions.

BACKGROUND

Guidance

The Internal Revenue Code and Treasury Regulations offer little guidance on what constitutes an employee for federal employment tax purposes. The Supreme Court has ruled that when a statute does not specifically define the term "employee," then common law should be applied when making a determination of worker classification (*Nationwide Mutual Insurance Co. v. Darden*, 503 U.S. 318(1992)). Common law rules dictate that an employer-employee relationship exists when the employer has the right to control the worker not only as to end result, but also as to the means of accomplishing that result. Revenue Ruling 87-41 (1987-1 C.B. 296) provides some guidance by listing the factors the IRS considers relevant when making worker classification decisions.

Additional guidance is available from the Service regarding worker classification. That is, a taxpayer may file for a letter ruling on form SS-8 (Determination of Employee Work Status). However, prior research suggests that this option may not be appropriate for those clients who prefer to file their workers as independent contractors. For instance, of the 346 private letter rulings reviewed by Frank (1989), the Service asserted that only 28 (roughly 8%) should be classified as independent contractors. The IRS cautions that these results are based on a biased sample because many of the ruling requests are submitted by either former or disgruntled workers.

To identify IRS patterns in making worker classification determinations, O'Neil and Nelsestuen (1993) analyze eleven separate private letter rulings issued in 1991 to workers of a single computer software firm. While the fact patterns relative to the eleven workers were nearly identical, nonetheless, the Service classified nine workers as independent contractors, one as an employee under common law, and one as a statutory employee. The authors conclude that the process is highly subjective and factors are inconsistently applied since "several factors appeared in the facts given by many or all of the workers, but resulted in different classifications" (O'Neil and Nelsestuen 1993, p. 963). When taken in combination, the Frank (1989) and O'Neil and Nelsestuen (1993) findings suggest that firms have reason to be skeptical seeking guidance from the IRS.

Selected Literature Review

Legal research (e.g., Sumutka, 1992, Burns and Freeman, 1996, and Carlson, 1996) in the worker classification arena indicates that not all factors of evidence equally impact administrative and judicial decision-making. A broader perspective and knowledge of unrevealed relationships can be obtained by applying statistical analysis to judicial determinations. In fact, one study (Burns and Groomer, 1983) compares the classification results of a judicial decision-making model developed using stepwise discriminant analysis with a

"postulated model" of expected variables gleaned from qualitative legal research. The result of the study "supports the argument that traditional tax planning based on qualitative determinations of variables should be supplemented by quantitative determinations" (Burns and Groomer 1983, p. 37).

Empirical testing aimed at identifying and measuring discriminating variables considered by the courts has been applied to a wide range of highly litigated tax issues including but not limited to: the valuation of closely held corporations (Englebrecht, 1976; Morris, 1986); the valuation of large blocks of publicly traded stocks (Kramer, 1982); accumulated earnings (Madeo, 1979); employee versus independent contractor classification for workers (Stewart, 1982); hobby versus business losses (Lett, 1981; Burns and Groomer, 1983; Robison, 1983; Jones, 1994); dividend equivalence (Englebrecht and Rolfe, 1982); and travel expenses (Pollard and Copeland, 1987).

Tax Court and Federal District Courts exhibit differences in the level of tax experience of judges, availability of jury trials, and need to remain consistent across districts. However, studies examining decision-making differences among judicial forums have yielded mixed results. Decision models varied between the Tax Court and Federal District Courts when considering worthless stock cases (Judd, 1985). Similarly, for decisions involving the valuation of large blocks of publicly traded stock, opinions of the Federal District Courts and Court of Claims vary significantly from those of the Tax Court (Kramer, 1982). Additionally, small differences are noted between Tax Court and Court of Claims decisions when considering the issue of economic interest (Fenton, 1986).

Conversely, differences between Tax Court decisions and those rendered in the Federal District Courts and Court of Claims are not evident in the Englebrecht and Rolfe (1982) study of dividend equivalence in stock redemptions or the Waters (1981) study of classifying expenditures as either repairs or capital improvements. Stewart also (1982) finds no significant disparity when comparing Federal District Courts to Court of Claims decisions concerning worker classification for employment tax purposes.

Worker Classification

Empirical analysis of worker classification is comprised of two articles, Stewart and Kramer (1980) and Stewart (1982) published from the Stewart (1980) dissertation. Data for his inquiry consists of published facts and opinions of all identified employee versus independent contractor cases tried in the Federal District Courts or Court of Claims, the courts of original jurisdiction, from 1940 to 1979. Tax Court decisions are not included because of the limited number of decisions available at the time and lack of the court's direct jurisdiction over employment tax matters.

Stewart performs discriminant analysis, forward stepwise OLS regression, and Logit analysis for modeling judicial decision-making in worker classification cases.³ The models correctly classify 96.6 percent, 95.3 percent, and 97.3 percent of the court cases, respectively. The following five variables are common to all three models: (1) Supervision; (2) Realization of Profits or Loss; (3) Independent trade; (4) Continuing relationship and (5) Integration.

Since 1979, the employment landscape has changed dramatically; critical administrative guidance has been promulgated and significant judicial guidance has been issued; and the largest number of worker classification cases has been decided in the Tax Court (a forum not included in Stewart's study). As a result, further examination of this topic is warranted.

METHODOLOGY

Hypothesis Development

Based upon examination of judicial decisions and revenue rulings, the Service identified twenty factors to be considered when making such a determination. The District Court in the case of *In re Rasbury* (69 AFTR 2d 92-1056 (N.D. Ala. 1992)) held that the IRS's twenty-factor test was not all-inclusive and applied an additional four factors when determining the IRS had incorrectly reclassified independent loggers as employees.

The classification of a worker as an employee or independent contractor is a determination of fact. The ultimate resolution of disputes between employers and the Internal Revenue Service as to worker classification rests with the courts. Since extant research has been able to identify and measure discriminating variables in other highly litigated tax issues, we therefore posit:

H1. Differentiation between employees and independent contractors for federal tax purposes is possible based upon the factors delineated in administrative and judicial rulings.

The ambiguity inherent in current legislative and administrative guidelines relative to worker classification necessitates a subjective application of those guidelines with the result being a considerable amount of litigation. An objective of this research is to statistically model judicial decision making of worker classification cases for prediction purposes.

H2. Differential factors can be used to predict a worker's classification for federal tax purposes.

Since 1979, the Tax Court has decided the majority of employee versus independent contractor cases. This shift in judicial forum for the majority of worker classification cases may also have caused changes in regards to the factors considered when decisions are rendered. For instance, the Tax Court is comprised of nineteen judges with tax practice backgrounds who hear only tax cases. In contrast, the Federal District Courts and U.S. Court of Federal Claims include a much larger number of judges who come from diverse backgrounds, are not generally tax specialists, and who hear primarily non-tax cases. Due to these differences in judicial forums, we expect:

H3. There are significant differences between judicial forums with regard to factors considered when making worker classification determinations.

This study spans a twenty-six year time period during which the employment landscape changed dramatically, critical administrative guidance has been promulgated, and significant judicial guidance has been issued. Accordingly, we predict:

H4. The factors considered by the courts in making worker classification decisions have changed significantly over time.

Sample

Worker classification cases litigated from 1980 through 2005 are identified from several tax databases including Commerce Clearing House, Research Institute of America, and LEXIS. The sample represents the known population of cases tried during the stated time period. The year 1980 is selected as a starting point for analysis since previous empirical research of worker classification (Stewart, 1982) examine court determinations for the years 1940 through 1979. One hundred sixty-seven cases are identified of which seventeen employment tax cases are eliminated due to the court's application of Section 530 of the *Revenue Act of 1978*.⁴ Ten cases are removed from the data set because insufficient information. That is, the reported decisions do not contain enough information to determine which variables the judge considered in rendering a decision. Only five Court of Federal Claims cases are identified for the 1980 through 2005 period. An objective in this study is to test for differences between judicial forums with regard to factors considered in worker classification cases. Due to the limited number of cases tried in the Court of Federal Claims, this forum and its five cases are excluded from the study leaving 135 Tax Court and Federal District Court cases in the data set. Several of the 135 court cases include two or more judicial decisions pertaining to separate and distinct employment relationships resulting in a total of 149 observations for analysis. Also, it should be noted that approximately 66% of the cases are from the Tax Court. The number of cases and observations by court are summarized in Table 1.

Table 1

Court	Cases	Observations
Tax Court	89	93
Federal District Courts	46	56
Total	135	149

Description Of Variables

Each of the 135 court cases is examined and information gathered and recorded relative to both dependent and independent variables. The dependent variable represents the court's determination of the worker's status as either an employee or independent contractor. The independent variables depict of the factors considered by the courts in arriving at its decisions.

Delineated in Revenue Ruling 87-41 (1987-1 C.B. 296) are twenty factors for consideration when making worker classification determinations. Although this study analyzes court cases decided prior to the issuance of the ruling, the factors listed therein are applicable because these factors were identified by the Service from a compendium of prior rulings and court cases dating back to 1947. A listing of the twenty factors in this ruling and the authorities cited for each factor can be found in Appendix A.

The U.S. Bankruptcy Court, in the case of *In re Rasbury* (71A AFTR 2d 93-4539 (Bankr. N.D. Ala. 1991)), cites four factors in addition to the twenty identified in Revenue Ruling 87-41 (1987-1 C.B. 296) The additional four factors identified by the court are industry practice or custom, intent of the parties, signed independent contractor agreements, and employee-type benefits provided.

Several of the variables listed in Revenue Ruling 87-41 (1987-1 C.B. 296) and *In re Rasbury* (71A AFTR 2d 93-4539 (Bankr. N.D. Ala. 1991)) are indicators of the same underlying concept. Similar to the approach taken by Stewart (1982), variables are consolidated if the authoritative literature defined one or more of the variables in terms of the other. Further, variables are combined if they are consistently considered collectively in judicial determinations. The combined variables include Opportunity for Profit or Loss, Right to Discharge/Terminate, and Intent of Parties.

Variable Coding

The court's determination of a worker as either an employee or independent contractor is a binary decision. The dichotomous dependent variable (V0) is coded for each case as a judicial determination of employee status (represented by a "0") or a determination of independent contractor status (represented by a "1"). The general convention given a binary response variable is to assign the code of "1" to the dependent class of greater interest. The IRS generally asserts employee status, and thus, in this study of worker classification for federal tax purposes, independent contractor status is considered to be the class of greater interest.

The twenty independent variables are qualitative in nature and as such each variable either provides evidence of the existence of an employer/employee relationship or an employer/independent contractor relationship. However, each factor is not necessarily applicable in every court decision. The assumption must be made that since judicial decisions are subject to review and reversal via the appeals process, judges will include, either in the facts, discussion, or opinion of the case, all information considered significant to the decision rendered. Logically, whenever a variable is not mentioned in a case, then that variable is not significant to the decision rendered or not applicable given the particular working relationship.

For this study, the assignment of +1/-1 codes to the independent variables are structured so as to assure positive correlation between the independent variables (coded +1 when independent contractor status is indicated) and the dependent variable (coded 1 for a judicial determination of independent contractor status). If a variable is not mentioned in a case (i.e., missing data), a code of "0" is assigned. This is consistent with the position that

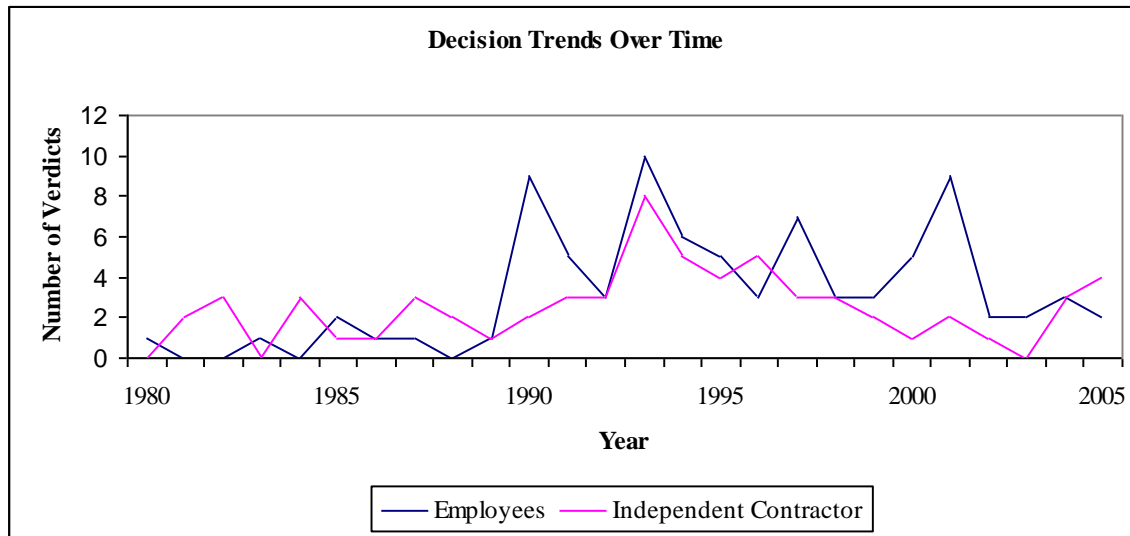
any variable not mentioned by the court is presumably inapplicable or insignificant to the judiciary's decision. A listing of the variable descriptions and coding scheme can be found in Appendix B.

RESULTS

Descriptive Analysis

Our final sample consists of 135 federal tax cases with 149 decisions. Of these, approximately 56 percent (84 decisions) result in a determination of employee status and 44 percent (65 decisions) yield determinations of independent contractor status. Decision trends relative to the number of cases tried and verdicts over the time period covered by the study are presented in Figure 1. As indicated, the number of worker classification cases litigated and employee determinations increased sharply during the 1990s. It is not surprising, given the trend depicted, that the worker classification issue was listed as the number one problem plaguing small business at the 1995 White House Conference on Small Business (U.S. Small Business Administration, 1996).

Figure 1
Decision Trends Over Time



Ten of the twenty predictor variables are noted in over half of the court decisions, as reported below in Table 2. Factors mentioned most frequently include Instructions/Supervision, Intent of the Parties, and Method of Payment. This is not surprising as the degree of employer supervision is generally considered the most important measure of employer control. Further, the Intent of the Parties and Method of Payment variables are relatively easy to assess. The intended type of working relationship can often be ascertained by examining underlying documentary evidence such as written contracts or federal tax forms including those required to be issued to employees (W-2s) or contract laborers (Form 1099s). Likewise, it is typically not difficult to determine whether a worker is being paid on a regular hourly, weekly, or monthly basis or conversely if compensation is based on commissions or completion of a specific job.

Table 2
Frequency of Consideration of Variables in Judicial Decisions
(in Descending Order)

Variable		Frequency				
		N	E	I	Total (E + I)	Percent (Total / 149)
V1	Instructions/Supervision	25	65	59	124	83.2
V19	Intent of the Parties	29	46	74	120	80.5
V12	Method of Payment	31	61	57	118	79.2
V14	Opportunity for Profit or Loss	40	62	47	109	73.2
V13	Furnishing Tools & Materials	48	64	37	101	67.8
V7	Set Hours of Work	55	36	58	94	63.1
V15	Working for More Than One firm	62	40	47	87	58.4
V9	Work Location	63	57	29	86	57.7
V6	Continuing Relationship	67	51	31	82	55.0
V17	Right to Discharge/Terminate	70	67	12	79	53.0
V20	Employee-Type Benefits Provided	79	40	30	70	47.0
V3	Integration	80	66	3	69	46.3
V5	Hiring, Superv., Paying Assistants	99	19	31	50	33.4
V2	Training	103	18	28	46	30.9
V8	Full Time Required	103	35	11	46	30.9
V11	Oral or Written Reports	106	26	17	43	28.9
V16	Services Available to Market	120	20	9	29	19.5
V10	Order or Sequence of Task Set	124	6	19	25	16.8
V4	Services Personally Rendered	132	12	5	17	11.4
V18	Industry Practice or Custom	133	3	13	16	10.7

N - Number of times variable was not mentioned in the court cases

E - Number of times variable was mentioned in favor of employee status

I - Number of times variable was mentioned in favor of independent contractor status

Logistic Model

Logistic regression is used to determine which factors are significant in explaining court determinations of worker classification. Since the initial model includes all potential variables considered by the judiciary when making worker classification decisions, the backward stepwise procedure is the technique used in this study. As a result of the backward stepwise procedure, the following variables are retained in the final logistic regression model (hereafter the Final Model), as shown in Table 3, are: (V1) Instructions/Supervision; (V3) Integration; (V5) Hiring, Supervising, and Paying Assistants; (V6) Continuing Relationship; (V12) Method of Payment; (V14) Opportunity for Profit or Loss; (V17) Right to Discharge/Terminate; and (V19) Intent of the Parties. The significance of these variables supports our first hypothesis. Parameter estimates and related statistics for this model are presented in Table 3.

Table 3
Logistic Regression Final Model

Overall Model Fit					
Likelihood Ratio	<u>Chi-Square</u>	<u>df</u>	<u>Significance</u>		
	162.2190	8	.000		
Hosmer and Lemeshow	<u>Chi-Square</u>	<u>df</u>	<u>Significance</u>		
	1.837	8	.986		
Variables In The Model					
Variable	B	S.E.	Wald	df	Sig. ^a
Constant	.162	.590	.076	1	.783
VI	3.476	.785	19.602	1	.000
V3	2.109	1.200	3.088	1	.079
V5	3.634	1.351	7.234	1	.007
V6	2.324	.799	8.468	1	.004
V12	1.771	.646	7.526	1	.006
V14	1.238	.660	3.520	1	.061
V17	3.258	1.214	7.207	1	.007
V19	1.741	.637	7.470	1	.006
Variables Not In The Equation					
	Score Statistic		Significance		
V2	1.456		.228		
V4	.088		.766		
V7	.025		.874		
V8	.799		.371		
V9	.529		.467		
V10	.002		.962		
V11	.066		.797		
V13	.937		.333		
V15	.037		.847		
V16	1.119		.273		
V18	.201		.654		
V20	.939		.332		

^a Significance level for the Wald statistic $PE=-05, P_R:=.10$

^b R statistic of partial correlation Cut Value =.50

For a comparison of significant variables found in the current study vs. those found in Stewart’s (1982) study, see Table 4. It is evident from Table 4 that both studies share four common significant variables. However, Stewart (1982) finds Independent Trade as a significant variable. Conversely, our study does not find Independent Trade to be significant. On the other hand, we find Hiring, Supervising, and Paying Assistants; Right to Discharge/Terminate; Intent of Parties; and Method of Payment to be significant.

Table 4
Comparison of Significant Variables in Worker Classification Models –
Stewart (1980) vs. Current Study

Variables	Stewart’s (1980) Logit Regression	Current Study’s Logistic Regression
Instructions/Supervision	X	X
Integration	X	X
Continuing Relationship	X	X
Opportunity for Profit or Loss	X	X
Independent Trade ^a	X	
Hiring, Supervising, and Paying Assistants		X
Right to Discharge/Terminate		X
Intent of the Parties		X
Method of Payment		X

^a Independent Trade factor combines: Working for More Than One Firm, Services Available to the Relevant Market, and Full Time Required

Diagnostics For Final Model

In the current study, there are 149 observations and twenty independent variables for a ratio of 7.45 to 1. The sample is not considered sufficiently large enough to split into analysis and holdout groups for validating the regression model. Therefore, the current study will utilize the following procedure as described by Hair et al. (1998, p. 259):

One compromise procedure the researcher can select if the sample size is too small to justify a division into analysis and holdout groups is to develop the function on the entire sample and then use the function to classify the same group used to develop the function.

The Final Model is shown to be significant through a model chi-square test. As indicated in Table 3, the Hosmer and Lemeshow chi-square statistic for the Final Model is not significant (Hosmer and Lemeshow, 1989). Indications are that there is no statistically significant difference between actual and predicted values for the dependent variable and that the model fits the data reasonably well. Additional support for the fit of the Final Model is the Likelihood Ratio test value reported in Table 3. This test rejects the hypothesis of an insignificant model. Furthermore, the model is able to correctly classify 81 of the 84 decisions of employee status and 63 out of 65 independent contractor determinations. The classification matrix reveals a very high overall hit ratio of 96.6 percent. Thus, hypothesis one cannot be rejected.

Alternative Model Specification

Recall that the logistic regression function in this study is estimated using trichotomous independent variables. Predictor variables identified as significant in the Final Model are recoded using dummy variables so that the coefficients may be interpreted in a meaningful manner. Specifically, each of the independent variables (X_j) is assigned two dummy variables (A and B) coded as follows:

VX_j A = 1 if the factor supports employee classification 0 otherwise

VX_j B = 1 if the factor supports independent contractor classification 0 otherwise

Therefore, a factor not mentioned in a judicial decision is assigned a code of "0" to both variables A and B and serves as the reference class. Results of the Final Model, recoded using the dummy variable technique, are presented below in Table 5. The Hosmer and Lemeshow test along with the Likelihood Ratio test reported in Table 5 indicate that the Final Model using the dummy variable coding is a well fitting model.

Table 5
Overall Fit and Parameter Estimates of Final Model using the Dummy Variable Technique

Overall Model Fit							
Likelihood Ratio		<u>Chi-Square</u>	<u>df</u>	<u>Significance</u>			
		166.3908	16	.000			
Hosmer and Lemeshow		<u>Chi-Square</u>	<u>df</u>	<u>Significance</u>			
		12.461	8	.132			
Variable		B	S.E.	Wald	df	Sig. ^a	Exp(B)
	<i>Constant</i>	.145	1.374	.011	1	.916	1.156
V1	<i>Instructions</i>						
V1(A)		-2.226	1.279	3.026	1	.082	.108
V1(B)		5.542	2.112	6.886	1	.009	255.24
V3	<i>Integration</i>						
V3(A)		-2.777	1.623	2.927	1	.087	.062
V3(B)		4.312	132.044	.001	1	.974	74.604
V5	<i>Assistants</i>						
V5(A)		-2.619	3.824	.469	1	.493	.073
V5(B)		5.642	2.229	6.410	1	.011	282.141
V6	<i>Contin. Rel.</i>						
V6(A)		-3.029	2.017	2.255	1	.133	.048
V6(B)		2.761	1.590	3.014	1	.083	15.816
V12	<i>Payment</i>						
V12(A)		-2.705	1.602	2.850	1	.091	.067
V12(B)		2.360	1.270	3.450	1	.063	10.588
V14	<i>Profit/Loss</i>						
V14(A)		-.228	1.495	.023	1	.879	.796
V14(B)		1.444	1.387	1.084	1	.298	4.239
V17	<i>Disch./Term.</i>						
V17(A)		-5.334	2.339	5.198	1	.023	.005
V17(B)		2.741	2.394	1.311	1	.252	15.504
V19	<i>Intent</i>						
V19(A)		-3.067	1.546	3.935	1	.047	.047
V19(B)		1.073	1.411	..579	1	.447	2.925

^a Significance level for the Wald statistic

Relative Importance Of Variables

The significant coefficients in Table 5 support our first hypothesis. Further, the coefficients imply that certain variables have a greater impact on the odds of an independent contractor status ruling. Rankings of the factors based on magnitude of the effect on log odds (B) and odds (Exp(B)) are presented in Tables 6 and 7. It is obvious that the Instructions/Supervision factor (V1A & V1B) is an important determinant of worker status. The estimated coefficients imply that the odds of being classified as an independent contractor are 255.24 times higher when it is found in court that the employer did not retain the right to control the details of the workers performance, when compared to the case in which this characteristic is not mentioned in court. Conversely, the odds of being classified as an independent contractor are .108 as high when the employer is found in court to have retained such rights, relative to the case when the factor was not mentioned in court. Not surprisingly, it is the most often cited factor in judicial decisions. It is also one of the more subjectively determined factors, which adds to the complexity of the worker classification issue. Aside from the Instructions/Supervision factor, the freedom of the worker to hire, supervise, and pay assistants (V5B), if assistants are needed, has the greatest positive impact on the odds of obtaining independent contractor classification. Conversely, the right of the parties to terminate the working relationship at will (V17A) appears to have the most influence in obtaining employee classification.

As indicated in Table 6, other factors having a significant influence on the odds of obtaining independent contractor status include: (V6B) a working relationship limited in duration, and (V12B) the method of payment. Although the Integration factor (V3B) ranks as the third most important factor in terms of coefficient magnitude, this factor is mentioned in support of employee classification in 96 percent of the court cases studied. Due to this limitation and the large standard error for the coefficient (see Table 5), results relative to variable V3B should be interpreted with caution.

Table 6
Effect on odds of independent contractor ruling -variables supporting independent contractor status
(In descending order)

Variable		Model Coefficients (B)	Factor of Effect on Odds Exp (B)
V5(B)	Hiring, Supervising, Paying Assistants	5.642**	282.141
V1(B)	Instruction/Supervision	5.542**	255.24
V3(B)	Integration	4.312	74.604
V6(B)	Continuing Relationship	2.761*	15.816
V17(B)	Right to Discharge/Terminate	2.741	15.504
V12(B)	Method of Payment	2.360*	10.588
V14(B)	Opportunity for Profit or Loss	1.444	4.239
V19(B)	Intent of the Parties	1.073	2.925

*Significant at the .10 level (Wald Statistic)
 ** Significant at the .05 level (Wald Statistic)

Factors that appear particularly relevant to a determination of employee status, as presented in Table 7, include: (V17A) the right of the parties to terminate the working relationship at will and (V19) the intent of the parties. Other variables that appear to provide at least moderate weight in supporting the employee classification include: (V12A) worker compensation on a regular and consistent basis, (V3A) continuation of business depends upon the performance of the worker’s services, and (V1A) the right of the employer to control how, when, and where work is performed.

The results provided in Tables 6 and 7 are also particularly noteworthy because they indicate that the factors of interest do not have the same magnitude of impact on employee status determination as they do on independent contractor determination. It appears as though the courts view some factors as stronger determinants of employer or independent contractor status than others. For instance, for V12(B) the odds ratio of a worker being classified as an independent contractor increases by a factor of 10.59 when it is found in court that the worker is paid by the job or on commission. However, according to V12(A), the odds of being classified as independent contractor fall by a factor of .067 when it is found in court that the worker was paid by the hour, week, or month. The relationship between V12(A) and V12(B) is clearly not symmetric, and this asymmetric relationship holds for other variables in the model. This demonstrates that the courts do not view these factors as equally well suited for both the determination of employee and independent contractor status. This is emphasized further by the fact the relative importance of each variable, by rank, is not the same in Tables 6 and 7. The evidence from our model thus provides information not only on statistical significance, but also on the relative importance of each factor, and how the relative importance of each factor differs in its applicability concerning determination of independent contractor vs. employee status.

Table 7
Effect on odds of independent contractor ruling - variables supporting employee status
(In descending order)

Variable	Model Coefficients (B)	Factor of Effect on Odds Exp (B)
V17(A) Right to Discharge/Terminate	-5.334**	.005
V19(A) Intent of the Parties	-3.067**	.047
V6(A) Continuing Relationship	-3.029	.048
V12(A) Method of Payment	-2.705*	.067
V3(A) Integration	-2.777*	.062
V5(A) Hiring, Supervising, Paying Assistants	-2.619	.073
V1(A) Instruction/Supervision	-2.226*	.108
V14(A) Opportunity for Profit or Loss	-.228	.796

*Significant at the .10 level (Wald Statistic)
 **Significant at the .05 level (Wald Statistic)

Predictive Power Of Significant Factors

The second hypothesis posits that differential factors can be used to predict a worker’s classification for federal tax purposes. It is tested by whether the logistic regression model is able to correctly classify a percentage, significantly better than chance, of Federal District Court and Tax Court decisions. Hypothesis 2 is supported with a hit ratio of 96.6 percent. Further, the Proportional Chance Criterion and Press’s Q statistic (129.67) indicate the model is effective in predicting worker classification for federal tax purposes.

Judicial Forum Impact

Hypothesis 3 states that there are significant differences between judicial forums with regard to factors considered when making worker classification determinations. Consequently, two separate tests are conducted to test for the effect of judicial forum. First, an indicator variable (V21/Forum) is added to the Final Model, and statistical significance of the variable is assessed. The variable has two categories coded "0" if the case was tried in the Federal District Courts and "1" if the decision was rendered by the Tax Court. Statistical significance of the logistic regression coefficient for variable V21 is appraised. Results indicate that Forum is not significant (Wald statistic = .025, Sig. = .875) in the determination of worker status for federal tax purposes. Thus, hypothesis 3 is not supported by the first test.

The second test for significant differences, in judicial forums, is a counterpart to the Chow test is employed (Greene 2003, 681). However, due to the high level of theoretical and statistical association between the dependent variable and the Instructions/Supervision variable, VI is removed as a predictor variable when testing for differences between judicial forums with respect to factors considered by the judiciary to avoid the problem of quasicomplete separation (Menard 2002, 79). The chi-squared statistic for testing the eight restrictions of the pooled model is 8.423. The 90 percent critical value from the chi-squared distribution with 8 degrees of freedom is 13.36. Therefore, the hypothesis that the constant term and the coefficients on V3, V5, V6, V12, V14, V17, and V19 are the same cannot be rejected.

Temporal Effect

Hypothesis four predicts that the factors considered by the courts in making worker classification decisions have changed significantly over time. Therefore, we perform two distinct tests for the effect of temporal differences. First, an indicator variable representing time period of litigation (V22/Time) is added to the Final Model and statistical significance of the variable is assessed. The variable has two categories coded "0" if the case was tried between 1980 and 1995 and "1" if the decision was rendered after 1995. The time break after 1995, corresponds with a series of actions taken by the IRS (Worker Classification Training Manual, Classification

Settlement Program, and Early Referral to Appeals) aimed at easing the burden on businesses following the 1995 White House Conference on Small Business. Results indicate that Time is not significant (Wald statistic = 1.236, Sig. = .266) in the determination of worker status for federal tax purposes. Thus, hypothesis four is not supported by the first test.

The second test for significant temporal differences, in the factors considered by the judiciary, is once again a counterpart to the Chow test (Greene 2003, 681). The resulting chi-squared statistic for testing the eight restrictions of the pooled model is 3.468. The 90 percent critical value from the chi-squared distribution with 8 degrees of freedom is 13.36. Therefore, the hypothesis that the constant term and the coefficients on V3, V5, V6, V12, V14, V17, and V19 are the same cannot be rejected.

Based on the results discussed above, the hypothesis that the factors considered by the courts in making worker classification decisions have changed significantly over time is not supported. Indications are that the model is able to predict employee or independent contractor classification irrespective of time period and the judiciary has consistently applied variables over time in making worker classification determinations.

Workers Role In Business

Although not identified as a classification factor, the role a worker undertakes within a business may also influence judicial decisions. As a result, Appendix C reports the services performed, hiring entity, and ultimate classification for this study's 149 observations. Taxpayers providing similar services and/or individuals with different functions working for similar business entities are aggregated. Furthermore, the aggregated scenarios resulting in either exclusively employee or independent contractor rulings are grouped together accordingly. The third grouping comprises the remaining scenarios that occurred in both employee and independent contractor decisions. Notwithstanding the inherent influence of the subjective groupings within Appendix C, it is noteworthy that 85 of the 149 observations received mixed judicial rulings. This further supports the need for this inquiry's classification model.

DISCUSSION

Summary

This research endeavor identifies eight variables as effective determinants of worker classification judicial decisions rendered between 1980 and 2005. Moreover, these eight variables have a higher predictive ability than could be achieved merely by chance. Further tests find no evidence to suggest differences exist between the Federal District Courts and the Tax Court relative to worker classification for federal tax purposes. With respect to potential temporal effects upon our results, we test for potential differences after the IRS issued a series of assists following the 1995 White House Conference on Small Business. However, we find no temporal effects in regards to the worker status classifications, predictive ability in our decision-making model, or the factors considered by the courts in making worker classification decisions.

Implications

The findings of this study have practical implications for those subject to ambiguous worker classification laws as well as for the writers, enforcers, and interpreters of those laws. Specifically, employer taxpayers relying on nontraditional work arrangements can apply the model developed in this study to current work relationships to assess the probability of independent contractor status. This should be especially helpful for both large and small business owners.

Employers and their advisors can use the model when structuring employment arrangements so that desired objectives are met. That is, if independent contractor status is preferred, the employer can fashion the work arrangement, in light of the results of the model, so that key variables are supported. Practical application of the model when structuring employment arrangements should be useful by minimizing the probability of worker reclassification and the resultant adverse tax and labor law consequences.

In the event of disputes pursuant to an Internal Revenue Service audit, results of this study should be useful to the IRS, taxpayer employers, tax practitioners, and attorneys in deciding whether to litigate. The model can assess the probability of a judicial determination of independent contractor status. Thus, work arrangements found to have a moderate to low probability for a favorable judicial ruling might be resolved out of court at a cost savings to all parties.

One possible solution to the worker classification problem is the development of clearer criteria for distinguishing between employment categories. This study provides lawmakers with insight into how the courts, as final interpreters of the law, resolve employee versus independent contractor conflicts. Where court cases are being decided in a manner consistent with legislative intent, then ambiguity can be reduced and consistency between judges encouraged by incorporating the findings of this study into future legislation.

Limitation

The potential effect on the model of decisions not included in the sample is unknown. Specifically, three categories of decisions are not reflected in the model: (1) cases involving IRS audits that are settled before litigation, (2) cases tried before a jury for which the printed record includes only instructions to the jury and final opinion (i.e. details as to the factors considered in reaching a decision are not disclosed), and (3) cases qualifying under Section 530 of the *Revenue Act of 1978*.

Suggestions For Future Research

The methodology used in this study could be extended to other areas of law in which worker status is an issue. Worker classification according to common law standards is an issue underlying a variety of workplace and nondiscrimination laws including the *Employee Retirement Income Security Act* (ERISA), the *National Labor Relations Act* (NLRA), and the *Copyright Act*.

ENDNOTES

¹ A statutory employee classification can occur under Code Sec. 3121(d)(3) for an individual that is not an officer of a corporation or an employee under common law rules. Nevertheless, this study is restricted to an analysis of common law employee vs. independent contractor classifications for the following reasons. First, all of the workers within our sample were classified as either the common law employees or independent contractors. Second, the Supreme Court's 1992 decision in *Nationwide Mutual Insurance v. Darden* (503 U.S. 318) noted that Congress "amended the statute so construed to demonstrate that the usual **common-law principles were the keys to the meaning**" of the term employee (503 U.S. 318, 324 (1992)). Third, a common law classification automatically disqualifies the statutory employee status (Code Sec. 3121(d)(3)).

² A more detailed discussion of this prior research may be found in Stewart's (1980) dissertation.

³ The discriminant analysis results are reported in Stewart & Kramer (1980), and the logit analysis results appear in Stewart (1982).

⁴ If certain requirements are met, Section 530 precludes the determination of a worker's factual status and allows employers to continue treating a worker as an independent contractor regardless of the worker's correct classification under common law principles.

REFERENCES

1. Burns Jane O., Groomer S. Michael. An analysis of Tax Court decisions that assess the profit motive of farming-oriented operations. *The Journal of the American Taxation Association* 1983; (Fall): 23-39.
2. Burns Jane O., Freeman Tracy A. Avoiding IRS reclassification of workers as employees. *The Tax Adviser* 1996; (February): 102-109.
3. Carlson Richard R. Selected topics on employment & labor law: Variations on a theme of employment: Labor law regulation of alternative worker relations. *South Texas Law Review* 1996; 37 (June): 661-97.
4. Donna Vizcaino, et al. v. Microsoft Corporation, et al.; Rebecca Hughes, et al. v. Microsoft Corporation, et al. U.S. District Court Class Action Settlement Agreement (W.D. Wash. Dec. 8, 2000), No. C93-178C, No. C98-1646C. 2000. Available at <http://www.bs-s.com>. Accessed March 31, 2004.

5. Englebrecht Ted D. An empirical investigation into the valuation of closely held corporations by the Tax Court for estate and gift tax purposes. Ph. D. Diss., University of South Carolina, 1976.
6. Englebrecht Ted D., Rolfe Robert J. An empirical inquiry into the judicial determination of dividend equivalence in stock redemptions. *Journal of the American Taxation Association* 1982; (Summer): 19-25.
7. Everett John O., Spindle Roxanne M., Turman Thomas. Employee or independent contractor: A determination with far-reaching consequences. *Accounting Horizons* 1995; (March): 1-12.
8. Fenton Edmund D. An empirical investigation into the Tax Court assessment of the economic interest concept in natural resource taxation. D.B.A. Diss., University of Kentucky, 1986.
9. Frank Barry H. Independent contractor vs. employee: Guidelines for the practitioner. *The Practical Accountant*, 1989; (December): 17-31.
10. Greene William H. *Econometric Analysis*. Upper Saddle River, NJ: Prentice Hall, 2003.
11. Hair Joseph F. Jr., Anderson Rolph E., Tatham Ronald L., Black William C. *Multivariate Data Analysis*. Upper Saddle River, NJ: Prentice Hall, 1998.
12. Hosmer David W., Lemeshow Stanley. *Applied Logistic Regression*. New York: John Wiley & Sons, 1989.
13. In re Rasbury, 69 AFTR 2d 92-1056 (N.D. Ala. 1992).
14. In re Rasbury, 71A AFTR 2d 93-4539 (Bankr. N.D. Ala. 1991)
15. Jones Rita C. A re-examination of factors influencing the business versus hobby issue in Tax Court cases and their relationship to assessment of the substantial understatement penalty. D.B.A. Diss., Mississippi State University, 1994.
16. Judd Andrew J. An examination of significant variables used by courts in worthless stock cases. Ph. D. Diss., University of Florida, 1985.
17. Kramer Sandra S. Blockage: Valuation of large blocks of publicly traded stocks for tax purposes. *The Accounting Review* 1982; (January): 70-87.
18. Lett Samuel L. An empirical investigation of trade or business attributes of quasi-business ventures under the Internal Revenue Code. Ph. D. Diss., University of South Carolina, 1981.
19. Madeo Silvia A. An empirical analysis of Tax Court decisions in accumulated earnings cases. *The Accounting Review* 1979; 54 (3) (July): 538-53.
20. Menard Scott. *Applied Logistic Regression Analysis*. Sage University Paper Series on Quantitative Applications in the Social Sciences, series no. 07-106. Thousand Oaks, CA: Sage Publications, 2002.
21. Morris Joseph L. A profile of winning and losing cases concerning the valuation of closely held shares for estate and gift tax purposes (stock, court, transfer, decisions, value). Ph. D. Diss., The University of Mississippi, 1986.
22. Nationwide Mutual Insurance Co. v. Darden, 503 U.S. 318 (1992).
23. O'Neil Cherie J., Nelsestuen Linda. Employee or independent contractor status?: Conflicting letter rulings continue controversy. *Tax Notes* 1993; 59 (May 17): 961-72.
24. Pollard W., Copeland R. Empirical modeling of Section 162(a)(2) Tax Court decisions: Identifying the location of a tax home. *Journal of Business Research* 1987; (February): 55-69.
25. Robison Jack. Tax Court classification of activities not engaged in for profit: Some empirical evidence. *The Journal of the American Taxation Association* 1983; (Fall): 7-22.
26. Stewart Dave N. Employee or independent contractor: An examination of the relevant variables employed by the federal courts in deciding the question. Ph. D. Diss., University of Florida, 1980.
27. Stewart Dave N. Use of logit analysis to determine employment status for tax purposes. *Journal of the American Taxation Association* 1982; (Summer): 5-12.
28. Stewart Dave N., Kramer John L. An empirical answer to the problem of determining Employee or Independent Contractor status. *Taxes – The Tax Magazine* 1980; (November): 747-57.
29. Sumutka Alan R. Employee or independent contractor? *The CPA Journal* 1992; (April): 48-55.
30. U.S. Department of Labor. Bureau of Labor Statistics. 2001. *Contingent and Alternative Employment Arrangements*. Economic News Release. Available at <http://www.bls.gov> (in Publications and Research Papers, Economic News Releases, Archived News Releases). Accessed March 31, 2004.
31. U.S. Small Business Administration. Office of Advocacy. Annual Report to the Chief Counsel for Advocacy on Implementation of the Regulatory Flexibility Act, Calendar Year 1995. Washington, D.C.: U.S. Government Printing Office, 1996. Available at <http://www.sba.gov/ADVO/laws/flex/>. Accessed March 31, 2004.

- 32. U.S. Internal Revenue Service. Revenue Ruling 1987-41, 1987-1 Cumulative Bulletin 296.
- 33. Vizcaino v. Microsoft Corp, 78 AFTR 2d 96-6690 (9th Cir. 1996).
- 34. Waters Gary L. Criteria for determining the appropriate tax treatment of expenditures as repairs versus improvements: An empirical investigation of judicial decisions. D.B.A. Diss., The University of Tennessee, 1981.

Appendix A
Factors Listed In Revenue Ruling 87-41

Variable	Authorities Cited
Instructions Supervision	Revenue Ruling 68-598 (1968-2 C. B. 464) and Revenue Ruling 66-381 (1966-2 C.B. 449)
Training	Revenue Ruling 70-630 (1970-2 C.B. 229)
Integration	United States v. Silk (331 U.S. 704)
Services Personally Rendered	Revenue Ruling 55-695 (1955-2 C.B. 410)
Hiring, Supervising, and Paying Assistants And Continuing Relationship	Revenue Ruling 55-593 (1955-2 C.B. 610)
Set Hours of Work	Revenue Ruling 63-115 (1963-1 C.B. 178)
Full Time Required	United States v. Silk (331 U.S. 704)
Work Location	Revenue Ruling 73-591 (1973-2 C.B. 337)
Order or Sequence of Tasks Set	Revenue Ruling 56-694 (1956-2 C.B. 694)
Oral or Written Reports	Revenue Ruling 56-694 (1956-2 C.B. 694) and Revenue Ruling 70-309 (1970-1 C.B. 199) and Revenue Ruling 68-248 (1968-1 C.B. 431)
Method of Payment	Revenue Ruling 74-389 (1974-2 C.B. 330)
Unreimbursed Expenses	Revenue Ruling 55-144 (1955-1 C.B. 483)
Furnishing Tools and Materials	Revenue Ruling 71-524 (1971-2 C.B. 346)
Significant Investment	Revenue Ruling 71-524 (1971-2 C.B. 346)
Opportunity for Profit or Loss	Revenue Ruling 70-309 (1970-1 C.B. 199)
Working for More Than One Firm	Revenue Ruling 70-572 (1970-2 C.B. 221)
Services Available to Market	Revenue Ruling 56-660 (1956-2 C.B. 693)
Employer Right to Discharge	Revenue Ruling 75-41 (1975-1 C.B. 323)
Employee Right to Terminate	Revenue Ruling 75-41 (1975-1 C.B. 323)

Appendix B
Variable Descriptions and Coding Scheme

Variable	Variable Coded -1 if:	Variable Coded 0 if:	Variable Coded +1 if:
Dependent Variable			
V0	The court determined the worker to be an employee.		The court determined the worker to be an independent contractor.
Independent Variables			
Instructions/S upervision V1	The employer retained the right to require the worker to comply with the instructions as to when, where, and how work was to be performed.	No evidence was presented regarding the degree of employer control over the details of the worker's performance.	The employer did not retain the right to control the details of the worker's performance.
Training V2	The employer provided periodic or on-going training for the worker relative to procedures to be followed or methods to be used in performing work.	Training was routine or would be provided to either employees or independent contractors (such as product or general orientation information) or no evidence was presented about employer provided training.	The worker did not receive training as to the methods or manner of work performance.
Integration V3	The success or continuation of the business significantly depended upon the performance of services offered by the worker.	No evidence was presented as to the degree of integration between the services offered by the worker and the success of the employer.	Services offered by the worker were not necessarily an integral part of the employer's business.
Services Personally Rendered V4	The employer required that the worker personally perform services.	No evidence was presented concerning whether or not the worker was required to personally render services.	The worker was not required to personally render services and retained the right to delegate.
Hiring, Supervising, and Paying Assistants V5	If assistants were required, the employer hired, supervised, and paid the assistants.	No information was given about the use of assistants.	The worker employed his own assistants if needed.
Continuing Relationship V6	The worker was retained by the employer for an indefinite amount of time.	The expected duration of the working relationship was not mentioned.	The working relationship was expected to continue for the duration of a specific project or for a specified period of time.

Appendix B (continued)
Variable Descriptions and Coding Scheme

Variable	Variable Coded -1 if:	Variable Coded 0 if:	Variable Coded +1 if:
Set Hours of Work V7	The employer established set hours of work for the worker.	No information was given concerning working hours.	The worker was in control of his own work hours.
Full Time Required V8	The worker was required to work full time for the employer.	No information was given concerning whether the worker was employed full time by the employer.	The worker was not restricted to working solely for the employer and was free to work for whomever he chose.
Work Location V9	The employer retained control over where the work was performed.	No evidence was presented regarding location of the work.	The employer did not retain control over where the work was to be performed.
Order or Sequence of Tasks Set V10	The employer had the right to stipulate the order or sequence in which work was to be performed.	No mention was made regarding the order or sequencing of work.	The worker was free to follow his own patterns of work.
Oral or Written Reports V11	The employer required oral or written reporting from the worker as to details of how the work was performed.	No information is given regarding reporting requirements.	Required reporting from the worker was nonexistent or limited to reporting the end result of work rather than how the work was performed.
Method of Payment V12	The worker was paid by the hour, week, or month.	No information was given concerning the method of payment by which the worker was compensated.	The worker was paid by the job or on commission.
Furnishing Tools and Materials V13	The employer furnished significant tools, materials, and other equipment necessary for the completion of work.	The furnishing of tools and materials was not mentioned.	The worker invested in his own tools, materials, and other equipment.
Opportunity for Profit or Loss V14	The worker had no opportunity to realize a profit or suffer a loss, beyond that ordinarily realized by an employee, as a result of the worker's services.	No mention was made of the worker's opportunity for profit or loss.	The worker had an opportunity to realize profit or was subject to real risk of economic loss due to (1) significant investment infacilities (including fair market value payment for use of employer's facilities) or (2) liability for unreimbursed business e

Appendix B (continued)
Variable Descriptions and Coding Scheme

Variable	Variable Coded -1 if:	Variable Coded 0 if:	Variable Coded +1 if:
Working for More Than One Firm V15	The worker performed services only for the employer.	No information is given regarding whether the worker performed services for more than one firm at a time.	The worker performed services for a multiple of unrelated persons or firms at the same time.
Services Available to the Relevant Market V16	The worker did not hold himself out to the general public as being available for the performance of services.	No evidence was presented about the worker offering or not offering his services to the market in general.	The worker made his services available to the general public on a regular and consistent basis.
Right to Discharge/ Terminate V17	The employer had the right to discharge the worker and/or the worker had the right to terminate the working relationship at will.	No information is given regarding the employer's right to discharge or the employee's converse right to terminate the work relationship.	The working relationship could only be terminated by the employer if the worker failed to provide results according to contract specifications and/or the working relationship could not be terminated by the worker without liability.
Industry Practice or Custom V18	Industry practice or custom is to classify workers in substantially similar positions as employees.	No mention is made of typical worker classification practices in the employer's industry.	Industry practice or custom is to classify workers in substantially similar positions as independent contractors.
Intent of the Parties V19	Information (e.g., labels, formW-2 filed, signed written agreement) indicates the parties intended the relationship to be one of employer-employee.	No information is revealed regarding the intent of the parties.	Information (e.g., labels, forms 1099 filed, signed written agreement) indicates the parties intended the relationship to be one of the employer-independent contractor.
Employee-Type Benefits Provided V20	The employer provided the worker with employee type benefits including insurance (worker's compensation, disability, health, life), paid vacation's, retirement, paid sick leave, or other fringe benefits.	No information was revealed regarding worker benefits.	The employer did not provide the worker with employee type benefits including insurance (worker's compensation, disability, health, life), paid vacation's, retirement, paid sick leave, or other fringe benefits.

Appendix C
Classifications of Taxpayers (1980-2005)

	Ruling	
	E ^a	IC ^b
<u>Employee Rulings</u>		
Doctor, medical director, veterinarian, and homemaker providing medical care.	6	0
Professional musician, voice actor, dancer, and makeup artist.	5	0
Adjunct and untenured professor.	3	0
Office assistant at a real estate investment corporation or a chemical manufacturer.	3	0
Baker, cash payroll worker, and deliveryman for a bakery company.	3	0
Stockbroker of a brokerage firm and a tax practitioner.	3	0
A secretary/bookkeeper and truck driver for a field sodding company.	2	0
Tenured Professor teaching evening/summer and U.S. professor on sabbatical leave.	2	0
Aircraft pilot/mechanic/dispatcher for an aviation corporation.	2	0
Video store clerk and late fee collector.	2	0
Auto body shop management.	2	0
Used car and traveling magazine salesperson.	2	0
Tool shaper at a grinding company.	1	0
Computer technician for a private company.	1	0
Cleaning worker at a cleaning service.	1	0
Repairman for a medical equipment repair company.	1	0
Drivers education instructor.	1	0
Bicycle assembler for a major department store.	1	0
Process server for a messenger service company.	1	0
Gas station owner/operator.	1	0
Model agency executive.	1	0
Crabmeat picker for a seafood plant.	1	0
<u>Independent Contractor Rulings</u>		
Dentist, nurse and daycare provider at respective businesses.	0	5
Advertising sales representative for a publishing and an advertising company.	0	4
Residential maintenance and repairman.	0	3
Off-duty police officer working as a security guard.	0	3
Logger and miner for a logging and a mining company, respectively.	0	3
President of self-created trust performing all services of the trust, e.g., real estate agent.	0	3

a. E = Worker Classified as an Employee b. IC = Worker Classified as an Independent Contractor
--

Appendix C (continued)
 Classifications of Taxpayers (1980-2005)

	Ruling	
	E ^a	IC ^b
Treasurer for a ranch, grass seed corporation, and janitorial service.	0	3
Foreman and landscaper for a field sodding company.	0	2
Marketing representative for a chemical distributor and an aerospace company.	0	2
Distributor of newspapers for a publishing company.	0	2
Clerical worker for a utilities company and a tribal president.	0	2
District manager for an insurance company.	0	2
Drywaller at a drywall entity.	0	1
Appraiser at a real estate firm.	0	1
Member of a fishing boat crew.	0	1
Nightclub coat checker.	0	1
Member of board of directors.	0	1
Professor presenting a non-university affiliated seminar.	0	1
Roofing employee receiving extra compensation for inventions.	0	1
Obtained automobile parts from junkyard for an auto parts corporation.	0	1
<u>Mixed Rulings</u>		
A lawyer, paralegal or office manager of a law practice.	7	1
Truck driver for a trucking/freight hauling and a courier service.	6	2
A skilled professional (e.g., engineer or architect) overseeing a U.S. foreign policy project.	4	3
A skilled professional (e.g., engineer or upper-management) consulting a business entity.	3	3
Insurance salesperson.	1	5
Sales representative for a wholesaler and a manufacturer.	4	1
Mechanic and part puller of an auto body shop.	4	1
Ordained minister.	2	2
A skilled professional advising either a U.S. municipal or U.S. state level government.	2	1
Management and carpenter of a home construction businesses.	2	1
Beautician/manicurists/cosmetologists at a beauty salon.	2	1
Salesperson at a sign and a decal company.	1	1
Reporter for a news service.	1	1
	<u>84</u>	<u>65</u>

a. E = Worker Classified as an Employee b. IC = Worker Classified as an Independent Contractor
--

NOTES