



TAX ALERT

New "Worker Classification" Legislation Creates Criminal Penalties for Construction Industry

New Jersey recently passed "The Construction Industry Independent Contractor Act" which sets up criminal penalties for contractors who knowingly classify employees as independent contractors to avoid state and federal taxes and benefits. The Act creates the presumption that construction workers are employees unless proven otherwise.

The legal presumption of employment can be overcome by establishing that the following three factors are present:

1. The individual is and will continue to be free from control or direction over the performance of that service
2. The service is outside the employer's ordinary course of business
3. The individual is engaged in an independently established trade, occupation, profession or business.

In addition to these new criminal penalties for employee misclassification, the misclassification could also lead to administrative and civil penalties imposed by the Department of Labor and Workforce Development including a suspension of the employer's registration and ineligibility for public contracts.

Please feel free to contact your W&G advisor at 732-846-3000 if you have any questions regarding employee classification.

Any U.S. tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

Wilkin & Guttenplan, P.C.

Certified Public Accountants
& Consultants

1200 Tices Lane
East Brunswick, NJ 08816
732-846-3000
fax: 732-846-0618
www.wgcpas.com

Jules C. Frankel, CPA, MBA

Edward I. Guttenplan, CPA, MBA

Michael M. LoVerde, CPA

William J. McDevitt, CPA, CVA

Annette Murray, CPA

Vinay Navani, CPA, MBA, MST

Deborah A. Norwicke, CPA

Gary B. Rosen, CPA, CFE

Sefi Silverstein, CPA

H. Edward Wilkin, III, CPA

Brian Geissler, CPA

Susan M. Klimcsak, CPA

Carol Koransky, CPA, MBA

Laura Crowley, CPA

Doreen Gordon, CPA

Melissa Marsicano, CPA

Daniel E. Manning, CPA

Leonard Nitti, CPA

Donna L. Peskin, CPA

Mohammed Salyani, CPA*

Janine Zirrieth, Administrator

**Licensed in MN*