

Larry's Tax Law

## **Worker Misclassification – The Stakes Just Got Higher**

By Larry Brant on 12.9.13 | Posted in Employee v. Independent Contractor

Earlier this year, the First Circuit United States Court of Appeals issued its decision in ***United States v. Albania Deleon***, 704 F.3d 189 (1st Cir., January 11, 2013). This case illustrates that worker misclassification may, in addition to the imposition of taxes and civil penalties, lead to criminal sanctions, including imprisonment.

Albania Deleon owned and operated two businesses: an asbestos abatement training school (“ECT”) and a temporary employment agency (“MSI”). This case focuses on Ms. Deleon and MSI. MSI supplied temporary workers to asbestos abatement contractors.

MSI maintained two separate payrolls for its workforce. One payroll reported a minority of the workers as employees, proper withholding of payroll and income taxes was done, and Form W-2s were issued to the employees. MSI reported in writing to both its customers (including governmental entities) and the occupational safety division of local government that it was responsible for and was complying with all employee withholding tax obligations.

The second payroll, which encompassed most of MSI’s workers, treated the workers as independent contractors—no withholding was done. Rather, IRS Form 1099s were issued to the workers. MSI told its accountants that these workers were independent contractors. Evidence in the trial record indicated Ms. Deleon had absolutely no factual basis for that conclusion.

In late 2006, as a result of an anonymous tip to the government that MSI was violating immigration laws and was involved in fraudulent payroll activity, state and federal investigators raided the offices of both companies. Based upon the information gathered in the raid, including computer records, the IRS concluded MSI had fraudulently avoided paying over \$1,000,000 in payroll taxes.

Ms. Deleon, owner of both companies, was charged with several counts of:

- mail fraud;
- making false tax returns;
- procuring false tax returns; and

- conspiracy to violate multiple federal criminal laws.

After an eleven-day trial, Ms. Deleon was convicted on all counts. She is now serving 87 months in federal prison.

Ms. Deleon had no basis for her characterization of a majority of the workers as independent contractors. She simply reported them as independent contractors to reduce her tax liability. She told her customers and the government she was properly treating the workers as employees. Worker misclassification cost her 87 months behind bars.

This case illustrates worker misclassification can lead to more than simply a tax liability and civil penalties. If you are interested in reading more about worker classification, please click on the links below:

1. [“The Affordable Care Act Creates A Trap For The Unwary– Worker Misclassification;”](#)
2. [“IRS Expands its Voluntary Worker Classification Settlement Program;”](#) and
3. [“Employee vs. Independent Contractor.”](#)

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