

## Consequences of Misclassification

Proper classification of a worker may be challenged in various ways. For example, in a well known decision, workers sued Microsoft in the 1990s claiming that they were really employees even though Microsoft treated them as independent contractors. See *Vizcaino v. Microsoft Corp.*, 97 F.3d 1187 (9th Cir. 1996), *modified en banc*, 120 F.3d 1006 (9th Cir. 1997). In that case, the Service in a routine review initially reclassified certain workers as employees, and it required Microsoft to pay withholding taxes and the employer's portion of Social Security and Medicare taxes. Following the reclassification, the workers then sued claiming they should have participated in Microsoft's employee benefit plans.

As noted in the Legal Guide, the decision demonstrates the interaction between tax controversies and other worker status inquiries. It is not uncommon for state taxing authorities also to follow a federal dispute. The stakes are high because employees typically have a

much greater arsenal of substantive rights than independent contractors. There are federal labor and employment laws that apply to and protect employees. Employees also have certain rights with respect to participation in employer-sponsored retirement and employee benefit plans. Also relevant to classification is the fact that employees are generally much more likely to bind the employer with respect to tort and contract claims than an independent contractor. The Legal Guide deftly covers all of these areas in separate chapters.

## Section 530 Safe Harbor

If the Service were to challenge a classification, the employer may be able to rely on a safe harbor introduced as section 530 of the Revenue Act of 1978. When it applies, section 530 may relieve an employer of liability for unpaid taxes, as well as penalties and interest. The safe harbor is different from the traditional 20 factor test—it does not turn on control. Instead, it applies when an employer can show that it (1)

consistently treated the workers as independent contractors, (2) complied with Form 1099 reporting for the tax years at issue, and (3) had a reasonable basis for treating the workers as independent contractors. The third requirement—reasonable basis—can be met through judicial precedents or administrative rulings, a prior audit, industry custom, or a catch all “other” reasonable basis.

The Legal Guide navigates the elements of the section 530 safe harbor, and it illustrates the application of the safe harbor in various cases.

Throughout the years, the Service has focused on worker status and, given the stakes and the often ambiguous nature of worker status, it will surely continue to do so in the future. The Legal Guide will prove a useful tool when confronting the thorny classification issue and its consequences.

Robert W. Wood's book, *Legal Guide to Independent Contractor Status* (5th Ed. 2010), is available at <http://www.taxinstitute.com>. Compression bound, including CD, 1,034 pages, \$399. ■

# 10th Annual Law Student Tax Challenge

The Section of Taxation would like to congratulate all of the J.D. and LL.M. teams who participated in the 10th Annual Law Student Tax Challenge competition. A total of 95 J.D. submissions and 31 LL.M. submissions were received, making this year's Challenge the most competitive to date. The following ten teams were selected to participate in the oral rounds of the competition, which took place on January 21 at the Tax Section's 2011 Midyear Meeting in Boca Raton. The winners' names are available on the Section's website at: <http://www.abanet.org/tax/lstc/>.

## J.D. Semi-Finalists

**Cleveland State University College of Law**  
Caryn Gross and Michael Tangry  
Coach: Deborah A. Geier

### Liberty University School of Law

Tim M. Todd, Jr. and Melissa M. Ogden  
Coach: F. Philip Manns, Jr.

### University of Florida Levin College of Law

Ben Friedman and Christopher Mikes  
Coach: Charlene Luke

### University of Kentucky College of Law

Leah Chalkley and Patrick Kern  
Coach: Jennifer Bird-Pollan

### Samford University School of Law

Wes Hill and Sims Rhyne III  
Coach: Brannon Denning

### William and Mary School of Law

Peter J. Farrell and Jonathan D. Puvak  
Coach: William M. Richardson

## LL.M. Finalists

### Northwestern University School of Law

Judson Bryant and John Goodell  
Coach: Robert R. Wootton

### Temple University School of Law

Travis Wheeler and Jeanmarie Dunn-Kane  
Coach: Andrea Monroe

### University of Denver College of Law

Jenifer Jewkes and Matthew Wiseman  
Coach: Alicia Buckingham

### University of Missouri-Kansas City School of Law

Nicholas Bracco and Samuel Burnett  
Coach: Judith F. Wiseman

The Law Student Tax Challenge was established in 2001 by the Tax Section's Young Lawyers Forum to provide a unique opportunity for law students to research “real-life” tax planning issues and to demonstrate their acquired tax knowledge through their writing and oratory skills before a panel of seasoned practitioners from private practice, government, and academia.