

# Compliance problems of the small firm

Surkin & Handlin, P.C.

## *Choice of entity*

- Sole proprietorship
- partnership
- LLP
- S Corp.
- C Corp.
- Taxpayer ID number required for all entities

**Individual may use own social security number, unless individual has employees, in which case individual must get employer identification number**

## ***Federal Income taxes***

forms to be filed

- **Will your accountant do it? Only if you tell him/her**
  - **due dates vary with choice of entity**
- **Sole proprietorship**
- **Schedule C**
- **partnership**
- **Form 1065**
  - **Schedule K-1 for each partner**
- **LLP**
- **usually treated as a partnership**
  - **beware the single person LLC/LLP**
  - **IRS may treat as a corporation**
- **S Corp.**
- **Form 1120S**
  - **Schedule K-1 for each shareholder**
  - **Due date: March 15**
- **C Corp.**
- **Form 1120**
  - **Due date: March 15**
  - **Personal services corporation taxed at flat 35%**

## ***State income taxes***

- Sole proprietorship
  - **Schedule C from Federal return, attached to State return**
  
- partnership
  - **Form NY IT-204**
  - **Schedule K-1 for each partner**
  
- LLP
  - **usually treated as a partnership**
  - **IT-204 LL—LLC fee**
  
- S Corp.
  - **Form CT-3S or CT-4S**
  - **Schedule K-1 for each shareholder**
  - **Due date: March 15**
  
- C Corp.
  - **Form CT-3 or CT-4**
  - **Due date: March 15**

## ***NY City taxes***

- Sole proprietorship
  - **Form NYC 202 unincorporated business tax**
  
- partnership
  - **Form NYC 204 unincorporated business tax**
  
- LLP
  - **usually treated as a partnership**
  - **Form NYC 204**
  
- S and C Corp.
  - **Form NYC 3L or NYC 4S**
  - **S and C corps are treated the same for NYC purposes**
  - **Due date: March 15**
  
- Estimated taxes
  - **All of the above taxes are subject to estimated taxes.**
  - **Watch the due dates—they differ from individual estimated tax due dates**
  
- Other NYC taxes
  - **Rent tax**
  - **Due dates are based on May 31<sup>st</sup> fiscal year**

# ***Employees and independent contractors***

IRS classification—20 factors test

1. instructions to worker
2. training
3. integration into business operations
4. requirement that services be rendered personally
5. hiring, supervising, and paying assistants
6. continuity of the relationship
7. setting the hours of work
8. requirement of full-time work
9. working on employer premises
10. setting the order or sequence of work
11. requiring oral or written reports
12. paying worker by the hour, week, or month
13. payment of worker's business and/or traveling expenses
14. furnishing worker's tools and materials
15. significant investment by worker
16. realization of profit or loss by worker
17. working for more than one business at a time
18. availability of worker's services to the general public
19. firms' right to discharge worker
20. worker's right to terminate relationship

Rev. Rul. 87-41, 1987-1 CB 296

**You will not win on secretaries, due to the “integration with business” factor, (unless the secretary works for a bona fide separate business that provides services for a number of different companies, such as a temporary agency).**

*Kenney v. Comm’r*, T.C. Memo 1995-431.

**You will not win on paralegals**

**You will not win on “of counsel” attorneys unless they have their own practices and do similar work for other attorneys**

## ***Filing requirements***

### ➤ Independent contractors

- For each person your pay more than \$600 per year you must file Form 1099 with IRS, mail copy to the worker before 1/31
- Form 1099 also applies for all service providers, such as rent or expert witnesses.
- No Form 1099 need be sent to a corporation, only to individuals, partnerships and LLCs.

### ➤ Employees

#### ☞ **Unemployment insurance**

- You are responsible for notifying NYS Dept. of Labor and obtaining an ER (employer reporting) number prior to the first calendar quarter that you have one or more employees.
- Quarterly return required. Return due during month after end of quarter, i.e., first quarter return due in April, second quarter return due in July.

#### ☞ **Workers' compensation**

- Required for all employees
- May be obtained through the NYS Bar Assn., or directly from the State Insurance Fund, 190 Church Street, NY, NY.
- You are responsible for obtaining coverage as of the first pay period you have one or more employees.

#### ☞ **Disability**

- Required for all employees
- May be obtained through the NYS Bar Assn., or directly from the State Insurance Fund, 190 Church Street, NY, NY.
- You are responsible for obtaining coverage as of the first pay period you have one or more employees.
- Just because you arranged for Workers' Compensation coverage through the State Insurance Fund, do not assume they will issue Disability coverage. There are two separate departments that issue two separate policies, and they never communicate. For example, one letter referencing both policies will be delivered to whichever department's policy number appears first in the letter, and the other department will know nothing of your correspondence.
- They will require you to keep records as of the renewal date of the policy, which probably will not correspond to the end of your calendar year, fiscal year, or any other rational reporting period.

#### ☞ **Owner's exemptions**

- Owners of the business may elect to be exempt from Workers' Compensation and Disability.
- Sole proprietors and partners are always exempt
- Corporate shareholder/officers may be exempt if the corporation has no more than two shareholder/officers
- Separate elections must be made for both Workers' Compensation and Disability.

## ***Sales tax***

Attorneys services are not subject to sales tax in NY, but may be subject to sales tax in other states (e.g., Florida) If you are admitted to the bar in Florida, be sure to comply with Florida sales tax law for legal services rendered in to Florida domiciliaries

Products and goods purchased out-of-state and brought into the state are subject to compensating use tax.

Example: computer purchased by mail order. NYS auditors will routinely ask to see bills of sale whenever a taxpayer claims depreciation, to verify that sales or use tax was paid when the item was purchased.

**Law firms are generally not vendors subject to sales tax rules, but may have to pay compensating use tax on “casual transactions”**

☞ **You are responsible for filing and paying compensating use tax. You must file Form ST-100, filling in the portions for Report of Casual Sale, within 20 days of the date of the sale or the date the property is brought into NY State. You can get the form by calling the sales tax department at 1-800-CALL TAX.**