

Radio show host talks his way to a win in tax court on employment status*

A radio show host recently demonstrated that he could talk as well in tax court as he could in front of a microphone. At issue was the question of whether or not a person can be an employee as well as an independent contractor simultaneously with the same employer.

During 2007, Juan A. Ramirez was employed by Univision as an on-air talent and program director for radio station KXTN in San Antonio, Texas. In addition, to hosting a five-hour, six days a week radio program, his contract also called for him to perform various other duties.

These duties included working as an announcer at the radio station, attending staff meetings, and promoting the station in general by making off air appearances. For those services, Mr. Ramirez received a base salary, bonuses and stock options in Univision, the parent company of KXTN. Ramirez's employment agreement stated that his work was subject to the control of Univision and that he was to live up to Univision's professional standards in all aspects.

In 2005, KXTN was experiencing financial difficulties and Ramirez took it upon himself to personally find new sponsors. His efforts met with success. When he secured a new sponsor for the station, he worked with them extensively in the development of their advertising and marketing campaigns. Mr. Ramirez negotiated directly with the sponsors the amount that he was to be paid for his services to them. Neither

*Ramirez vs. Commissioner T.C. Summary Opinion 2013-38

Univision nor KXTN had any input as to the compensation that Ramirez would receive from his sponsors. However, the fees for Mr. Ramirez' "talent and remote" professional services were included as a line item in Univision's monthly billing to the sponsors. Univision in turn remitted the fees to Ramirez in his paycheck. Univision thus acted as a combination collection agent and paymaster between Mr. Ramirez and his sponsors.

Univision withheld Federal income tax as well as social security and Medicare tax from Mr. Ramirez' regular pay as well as the compensation for his promotional services from his sponsors. Both types of compensation were reported on his W-2 even though the fees for Mr. Ramirez' promotional services were outside the scope of his employment agreement.

In 2007, Mr. Ramirez filed a Schedule C (profit or loss from trade or business) with his personal tax return claiming \$26,303.00 in business deductions in relation to his earnings from his sponsors for his promotional services. He did not report any gross income on the top line of his schedule C since the income from his sponsorship promotional services was included in the gross wages of his W-2, and was thus being reported on page 1 of his tax return.

Upon audit, IRS disallowed the entire \$26,303.00 in business deductions on Mr. Ramirez' Schedule C. IRS claimed that Mr. Ramirez was not operating a "trade or business" and was therefore not entitled to file a schedule C, but rather the \$26,303.00 should be deducted by the taxpayer on Form 2106 as miscellaneous unreimbursed employee expenses. Deducting these expenses in this manner would

yield a decidedly less favorable result to Mr. Ramirez, since among other things, expenses deducted on form 2106 must be decreased by 2% of adjusted gross income, and may also cause an Alternative Minimum Tax Liability.

Mr. Ramirez and the IRS were ultimately unable to come to agreement as to the proper tax treatment of these expenses, so he filed a petition with the tax court.

WHETHER AN INDIVIDUAL IS AN EMPLOYEE OR AN INDEPENDENT CONTRACTOR IS A FACTUAL QUESTION TO WHICH COMMON LAW AND PRINCIPLES APPLY. THE FACT THAT AN INDIVIDUAL IS AN EMPLOYEE, DOES NOT FORECLOSE THE POSSIBILITY THAT THE INDIVIDUAL MAY INDEPENDENTLY CONTRACT WITH AN EMPLOYER IN ANOTHER CAPACITY (REESE V. COMMISSIONER T.C. MEMO. 1992-335.)

Ultimately, the tax court ruled that Mr. Ramirez was indeed an independent contractor for the following reasons:

Degree of control: Mr. Ramirez acted outside the scope of his employment with Univision with respect to his promotional services largely because Univision did not require Mr. Ramirez to find sponsors as part of his duties as a radio personality under his employment agreement. He took that duty upon himself when the radio station faced closure due to hard times. Mr. Ramirez developed his relationships with the sponsors, helped create the marketing campaign, copy points, and scripts. He also set his own fees for promotional services without supervision or input from Univision.

The court also pointed out that the opportunity for profit or loss is a strong indicator of one's independent contractor status.

Mr. Ramirez credibly testified that he offered his services to advertisers desiring him to be spokesmen for their products or services. His income depended on, in his words how hard “he hit the bricks.” There was documentation which made it clear that Univision was merely a conduit through which Mr. Ramirez was paid for his appearances and promotional services by the advertisers. Since Ramirez was solely responsible for determining his income from his self-solicited advertisers, and was at the risk of loss in the event they couldn’t or wouldn’t pay his fees - the taxpayer was exposed to substantial risk of loss. This factor weighed in favor of classifying him as an independent contractor.

In the end, all of the above factors (as well as several others not here mentioned) either favored Mr. Ramirez as an independent contractor or were deemed by the court to be neutral and did not weigh against him. Given due consideration to the totality of the facts presented, the court held that the talent and remote fees paid to Mr. Ramirez for his appearance and promotional services were earned by him as an independent contractor.

If you would like a copy of the case Ramirez vs. Commissioner, please send an email to david@ellisandelliscpas.com or call (626) 806-2838 and we will email it to you.

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