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# Absolutes

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## *Planning for Death and Taxes*

### Our Mission Statement

*To Provide Tax and Business Consulting Services that Drive Innovative Wealth Building Solutions*

## Properly Classifying Employees and Contractors

*The proper classification of an individual as an employee or a contractor is one of the most discussed employment topics. Read the information below as a guide to determine the correct classification.*

### Introduction to this topic:

Classifying an individual as a contractor instead of an employee – when he or she should be an employee – can result in unwanted attention from the IRS. Business owners must withhold income taxes and are subject to medicare, social security and unemployment taxes with their employees.

These taxes do not have to be withheld when working with independent contractors. The improper classification of an individual will lead to scrutiny from the IRS as well as additional employment taxes owed.

### Definitions of a contractor & employee:

According to the IRS, an individual is an independent contractor *“if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.”*

Similarly, the IRS defines an employee as an individual who performs work or services for an employer and the employer can determine *“what will be done and how it will be done.”* If an employer can direct and control the work of an individual, that individual will be classified as an employee.

### It's all in the details:

If the details of the work performed by an individual can be wholly determined and controlled by an employer, that individual is an employee. Meaning, if the who, what, when, where, why and more are the decisions of the employer, then the person performing those services is an employee. While this method of determining how to classify individuals is fairly straightforward, there are situations that crave more explanation.

### The three factors to consider:

The IRS uses a set of general guidelines in its decisions regarding the proper worker classification. The three most common determinants for its decisions focus on:

1. **Behavioral control** – The employer determines when, where and how the work is performed with ample training and detailed instruction.
2. **Financial control** – Will the individual performing the work incur profit or loss from the services? Are expenses reimbursed? Are the services performed by the individual available to other companies?
3. **Overall relationship of the parties** – Is there an employment contract in place? Does the individual receive benefits from the company?

*More information on the proper classification of individuals is available on the IRS website. To speak to one of our professionals regarding this issue, please call our offices at (713) 341-2740.*

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## Narrowing In On Captive Insurance

Hale Stewart, our newest legal expert introduced on page 4, joins the firm with an extensive background in captive insurance. He is the author of *U.S. Captive Insurance Law*, which provides readers with an in-depth analysis and history of captive insurance.

In his book, Hale paints a basic picture of the types of individuals and business owners who would consider starting a captive. He notes that a captive should be treated as a long-term endeavor.

### Why are captives formed?

There are a few different factors to consider before forming a captive. Two reasons to begin a captive are to mitigate the risk a business or individual has and protect assets.

### Four factors:

Hale writes more than 200 pages on the world of captive insurance. However, these four basic factors—outlined in his book—should be considered when forming a captive:

1. More than \$1.5 million in revenue;
2. Approximately \$250,000 or more in “self-insured or uninsured business risk”;
3. One hundred or more employees;
4. \$500,000 or more in annual commercial insurance expenses.

*To find out more information about captive insurance, please call our offices at please call our offices at (713) 341-2740.*

### Update on Recent 1099 Legislation

Recently, we wrote an article in the March edition of the *Absolutes* newsletter about the proposed 1099 legislation expansion. President Obama agreed with Congress and signed the legislation, thus repealing the proposed 1099 requirements. Businesses will not have to issue 1099-MISC to vendors or individuals for purchases of goods or services that total \$600 annually.

This comes as a relief to many small business owners who anticipated a flurry of paperwork and additional time devoted to comply with the proposed law.

## The Expert's Corner—Q&A On Vehicles & Taxes

*Many of our clients want to know more information about buying, leasing and depreciating vehicles for their personal and business use. Read the answers to some common questions regarding vehicles and taxes below from Tax Preparer, Billy Hsu.*

### **1. I want to use one of my personal cars in my business. How do I account for this in my taxes?**

If you use a personal car for business purposes you can deduct car expenses. There are two different methods to calculate your deductible expenses: Standard Mileage Rate and Actual Vehicle Expenses.

Standard Mileage Rate: The standard mileage rate in 2010 was 50 cents per mile, and the standard rate in 2011 is 51 cents per mile. Business mileage does not include personal mileage, or commuting mileage to and from your principal place of business. However, it does include: visits to clients or customers, getting from one workplace to another in the course of business when traveling within the area of your home, going to a business meeting away from your regular workplace and going to a temporary workplace.

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Actual Vehicle Expenses: If you choose not to use the standard mileage rate you can deduct actual vehicle expenses. Applicable expenses include: depreciation, lease payments (only the portion used for business use can be included), registration fees, garage rent, parking fees, gas, insurance, repairs, tires and tolls.

## 2. What method of expensing should I use in reporting the cost of car-related expenses?

The answer weighs heavily on personal circumstances. For example, if you live three miles from work and work at only one location it would be beneficial to deduct actual expenses. On the other hand, if you drive to many different locations to meet clients it would most likely be ideal to use the standard mileage rate. If you are unsure of which method to use, ask your tax professional and they will be happy to help you .

## 3. Should I lease or buy a vehicle that is going to be used as a business vehicle?

This depends on a few different things. If an individual is self-employed *and* is expecting taxable income to be high, it may be best to purchase the vehicle. With a vehicle used for work you may do a section 179 deduction for the full amount of the vehicle, significantly reducing your income for the first year you own the car. The downside of this is that you may not use the standard mileage rate in years following this deduction. Also, if you later decide to sell your vehicle you will have a basis of 0 and will have to report income of the entire selling price.

You are allowed to use the **standard mileage rate** whether the car is leased or purchased. If you choose to use **actual car expenses** you are not allowed a deduction for your monthly car payments. However, you are allowed to deduct the part of a lease payment for the use of the vehicle in your business.

## 4. What kind of recordkeeping do I need to have to be able to expense business vehicle costs?

It is best to keep a record of actual expenses by keeping documentary evidence such as receipts, canceled checks or bills. These should be kept in an expense book or folder. If you do not have documentary evidence for an expense that is less than \$75 you can include it by keeping written evidence of the expense.

To use the standard mileage rate you must keep track of your business mileage, commuting mileage, and personal mileage. Keeping a mileage book in your car to keep track of total mileage is a good idea.

## Conclusion

Whether deciding to use the standard mileage rate or actual car expenses it entirely depends on your unique set of circumstances. It is also important to remember that if you are reimbursed for your vehicle use you can only deduct the amount of expenses that exceed what you were reimbursed. If you are not sure which method is best, one of our tax professionals would be glad to assist you. We will be happy to explain to you all of your options.

## Our Newest Member & A Webinar

*Our newest team member joins the firm with years of expertise in the world of taxation and law. Meet Hale Stewart, our newest expert.*

LRC is proud to introduce its newest member to the legal team. Hale Stewart joins the firm as an expert in tax and risk management.

### Education & background:

Hale has a J.D. from South Texas School of Law and a masters in domestic and international taxation from the Thomas Jefferson School of Law, where he graduated Magna Cum Laude. He is the author of the book, *U.S. Captive Insurance Law*, which thoroughly examines the world of captive insurance and its history.

### Certifications of note:

Hale has been certified as a Chartered Asset

Manager, Chartered Wealth Manager and Chartered Trust and Estate Planner from the American Academy of Financial Management.

At LRC Hale specializes in tax controversy, risk management and more.

### A free webinar covering captive insurance:

Hale is also an avid webinar speaker. He will be hosting a free webinar May 26<sup>th</sup> to discuss the basics of captive insurance. Hale will give a “30,000 foot view” of captive insurance and answer common questions associated with this subject.

This webinar is completely free and is a great introduction to this sometimes complex topic.

Questions will be answered at the end of the event.

### To sign up for this webinar, please visit:

<https://www3.gotomeeting.com/register/998440038>

## May's Featured Staff Member

**M**ichele Key has been selected as May's featured staff member. Michele joined the firm in December 2010 to manage marketing and corporate communications. She will be handling corporate compliance for clients as well. She has been selected as this month's featured staff member for her commitment to the firm and her hard work.

Michele is a graduate of Baylor University where she received her B.B.A in Marketing and Management. Please join us in congratulating Michele for her work and efforts.



*Michele Key*

### Minutes Reminder:

Beginning in June we will be sending reminders that annual meeting minutes should be completed. LRC provides the services to complete these minutes and can assist you and your business with any questions you may have. *For more information, please call our offices at (713) 341-2740.*

### How can our team of professionals help you or your business? We specialize in the following services:

Asset Protection  
Wealth Preservation  
Buy-Sell Agreements  
Business Sales  
Residential Mortgages  
Business Acquisition  
Personal Tax Preparation

Probate  
Wills & Powers of Attorney  
Business Succession Planning  
Family Limited Partnerships  
Commercial Mortgages  
Tax Controversy  
Corporate Tax Preparation

Tax & Estate Planning  
Business Control  
Business Organizations  
Trusts  
Asset/Debt Restructuring  
Estate & Gift Tax Preparation  
Partnership Tax Preparation