



1st Quarter 2008

## Tax Alert for 2007 Filing: New IRS Form Requires an Answer to the Question—Employee or Independent Contractor?

Freelancers, consultants, “work for hire” specialists, home-based and other workers are sometimes confused about whether the IRS sees them as an employee or an independent contractor when it comes to the arrangements they made with the companies paying them for their work. The IRS rules can be unclear and easily misinterpreted by workers and companies. This is especially true when it comes to paying taxes, reporting income and claiming deductions.

The IRS has developed a new form for certain workers to use when they should have been classified as employees and paying employment taxes accordingly. According to the IRS, “Form 8919, Uncollected Social Security and Medicare Tax on Wages, will be used beginning for tax year 2007 by workers who performed services for an employer but the employer did not withhold the worker’s share of social security and Medicare taxes.” In other words, this form basically allows or forces these individuals to “report” the businesses that misclassified them.

**The question of whether a worker is an independent contractor or employee for federal income and employment tax purposes is a complex one. It’s intensely factual, and the stakes can be very high.**

It’s commonly known that if a worker is an employee, the employer must withhold federal income and payroll taxes, pay the employer’s share of FICA taxes on the wages plus FUTA tax, and often provide the worker with fringe benefits it makes available to other employees. There may be state tax obligations as well.

These obligations don’t apply to independent contractors. The business may choose to send an independent contractor a Form 1099-MISC for the year showing what he or she was paid (if it amounts to \$600 or more), and that’s it.

## Honeck•O’Toole Needs Your 2007 Tax Information by March 19, 2008

Remember—it can take up to four weeks to complete your tax return. Therefore, **we need your tax information by March 19** to guarantee that you’ll have your Federal and state returns by the April 15 deadline. Yes, Income Tax Day really is April 15 this year! For the first time in many years, there are no extra days due to any holidays.

**Please send us your information right away, even if you don’t have every detail.**

For example, some brokerage firms are not sending 1099’s until later because information on mutual funds is often not available early. In the past, this required brokerages to send corrected 1099’s. This year, the brokerages are waiting so they don’t have to do corrections. Please send the rest of your tax information instead of waiting for these. You can forward them when they arrive.

If you’re unable to meet this deadline, we’ll be happy to file for an extension. Remember, you can extend the time to file but you cannot extend the time to pay...so you’ll need to send a payment with the extension form if you expect a balance due.

### 5 Easy Ways to Meet Your Tax Return Deadline

1. Complete our Tax Questionnaire and the first few pages of our Tax Organizer that were sent to you, making sure your name and address are correct.
2. Optional: complete the full Tax Organizer. Please note: we’re saving trees this year by sending out the full Tax Organizer ONLY upon request. **Please contact the front desk ASAP if you need a full Tax Organizer.**
3. Collect your information, including tax forms you received (W-2, etc.), interest statements, year-end stock/mutual fund statements, etc. You DO NOT need to list these items in your Tax Organizer if you’re providing statements to us.

## ◀TAX ALERT continued from page 1

### Who's an "employee?" There is no uniform definition of the term.

Under the common-law rules (so-called because they originate from court cases rather than from the tax code), an individual generally is an employee if the enterprise he works for has the right to control and direct him regarding the job he is to do and how he is to do it.

Individuals who are "statutory employees," (that is, specifically identified by the tax code as being employees) are treated as employees for social security tax purposes even if they aren't subject to an employer's direction and control (that is, even if the individuals wouldn't be treated as employees under the common-law rules). These individuals are agent drivers and commission drivers, life insurance salespeople, home workers, and full-time traveling or city salespeople who meet a number of tests. Statutory employees may or may not be employees for non-FICA purposes. Corporate officers are statutory employees for all purposes.

### Who's an "independent contractor?"

Individuals who are statutory independent contractors (that is, specifically identified by the tax code as being non-employees) aren't employees for purposes of wage withholding, FICA or FUTA, and the income tax rules in general. These individuals are qualified real estate agents, freelance designers and writers, photographers, certain commercial and residential painters and carpenters, several categories of direct sellers, contracted security guards, and other types of workers who are not under company supervision, control or direction.

### Here's an example of where it all gets fuzzy:

A freelance graphic designer has established her own sole proprietorship and has set up a complete office in her home. However, she does design work every week for one of her clients, a larger corporation, and works on location at that company, using the company's equipment

and doing the same work as other freelancers and on-staff graphic designers. She also needs to follow the same design protocols and production schedules as the rest of the team. This arrangement meets the IRS's definition of an employee because the freelance designer's "co-workers" are performing similar services under similar direction and control and are treated as employees.

Under the new IRS requirement, this graphic designer would need to complete Form 8919 for 2007 to figure and report the employee's share of uncollected social security and Medicare taxes due on their compensation. The designer's social security and Medicare taxes will be credited to their social security record (the IRS will electronically share Form 8919 data with the Social Security Administration). Therefore, she may end up paying less in self-employment taxes, but the employer (her "client company") may have to pay more.

Some employers that have misclassified workers as independent contractors are relieved from employment tax liabilities under Section 530 of the '78 Revenue Act (not the Internal Revenue Code). In brief, this protection applies only if the employer:

- filed all federal returns consistent with its treatment of a worker as an independent contractor;
- treated all similarly situated workers as independent contractors; and
- had a "reasonable basis" for not treating the worker as an employee.

The "client company" in the above example should work with a tax lawyer to take the appropriate steps.

**Confused yet? If you feel that you may be a misclassified employee or an employer facing this issue and you need assistance, please call us for guidance. ■**

## ◀TAX INFORMATION continued from page 1

4. Give us your completed Tax Questionnaire, Tax Organizer and tax information. You can mail it to us or drop it off at our office. We'll call you with any questions.
5. Be sure to get us your information by **March 19, 2008!** This will guarantee that you'll have your return by April 15, 2008.

### Electronic Filing Available For Your Returns

Honeck & O'Toole can electronically transmit both your Federal and Maine tax returns for you. If you're expecting a refund, electronic filing speeds up the process so you get your refund check approximately two weeks sooner than if you mail your return. Some special forms cannot be filed electronically. If we are completing these forms for you, we'll let you know.

### IMPORTANT NOTE: We do need your signed approvals to file your returns electronically.

Check off the YES box next to the electronic filing question in our questionnaire. We'll send you the appropriate forms to sign and return to us.

### Please call the front desk if you need help: 207-774-0882

If you're calling on the status of your return or to set up an appointment with an accountant, the front desk can respond more quickly than if you leave a voicemail message with a tax preparer or your accountant. Rest assured that our front desk team will take good care of you. ■



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## What is EFTPS® and Why is it Becoming the Standard?

Important news: most banks are no longer accepting tax payments. The IRS is pushing for all payments to be made electronically. The good news is—electronic payments are convenient, safe and secure methods for paying taxes or user fees. Here are a few details about electronic payment methods, including the U.S. Treasury's Electronic Federal Tax Payment System (EFTPS).

- You can e-pay in a single step by authorizing an electronic funds withdrawal, using a credit or debit card or enrolling in the EFTPS.
- Payments can be made 24 hours a day, 7 days a week. Please note that they're required to be submitted one calendar day before the due date.
- Regardless of how your tax return is filed, you can pay by phone or the Internet. Your EFTPS instructions

will initiate a debit against the bank account you choose.

- You can pay your quarterly 1040ES estimated taxes and payroll taxes electronically using EFTPS weekly, monthly, or quarterly.
- Electronic filing and paying eliminate the need to submit an associated payment voucher such as Form 1040-V. The 8109 B formerly used for payroll deposits will no longer be available.
- The electronic funds withdrawal and EFTPS options are free.

### How do you enroll in the EFTPS?

It's easy. Complete the online New Taxpayer Enrollment Form at [www.eftps.gov/eftps/home.do](http://www.eftps.gov/eftps/home.do). Within 15 calendar days, your Personal Identification Number (PIN), confirmation and instructions will be mailed to your IRS Address of Record. ■

### How to Reach Us

T: 207.774.0882  
F 207.773.2047  
[info@honeckotoole.com](mailto:info@honeckotoole.com)



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## Everything You Need to Know About the Maine Property Tax Refund

Tax relief could possibly be yours from the State of Maine. Under the Maine Residents Property Tax and Rent Refund "Circuit Breaker" Program, eligible Maine residents can receive a partial refund of their property taxes and/or rent paid on their primary residences. The maximum refund available is \$2,000.

Under the program guidelines, you may qualify for a refund if:

- You do not have a spouse or dependent(s) and your 2006 household income was \$80,750 or less; or
- You do have a spouse or dependent(s) and your 2006 household income was \$105,750 or less

AND

- Your 2006 property tax was more than 4% of your 2006 household income; or
- The rent you paid in 2006 was more than 20% of your 2006 household income.

NOTE: Seniors do not need to meet this requirement when their household income is below \$13,200 for those

living alone or below \$16,300 for those living with a spouse or dependent.

**We can help you prepare the application—it may be well worth the effort. Here's how it works.**

- We do charge to prepare this return.
- If you'd like us to prepare it, please include a copy of your 2007 tax bill with your other tax information and check yes on the questionnaire where we ask about this.
- If your mailing address is not your home's physical address, please provide the physical address.
- If you pay rent, we need the name and phone number of your landlord along with the total rent amount paid during 2006. If your rent is over \$9,000, attach copies of your rent receipts. Please indicate if your rent includes heat.
- And, if you receive child support, we need to know how much.

Please note that Maine batch-processes these returns, so it can take a while to get your refund. If you receive any correspondence from the state regarding the return, please call our office to verify what they're saying. ■



**Richard Berman’s Chestnut Street Lofts**

Recently featured in Portland magazine, these new lofts are described as being “refreshingly contemporary and reassuringly traditional.” The 37 units feature sealed concrete floors, ample windows, Ikea kitchens, and a shared rooftop terrace. Developer Richard Berman conceived them as a value-driven in-town home ownership option for young professionals with incomes at or near the median level (\$45,503). However, it turns out that people of all ages and occupations have bought these units. Richard said, “Creative, artistic, and entrepreneurial buyers are moving in, which is indicative of the Bayside area coming up and being rediscovered. This is a success story in our ‘down’ residential real estate market.” Richard mentioned that architect Scott Teas did a fantastic job in breaking new ground in residential design here. For details, call Richard at 772-3255.

**Green Elephant Restaurant**

Dan Sriprasert and Bob Wongsachua, owners of the popular Bangkok Thai restaurant in Portland’s Longfellow Square, recently opened a second restaurant called the Green Elephant. This all vegetarian, pan-Asian restaurant serves lunch and dinner in a sleek, minimalist setting. It’s actually Portland’s first all-vegetarian dining spot! The Green Elephant lives up to its eco-friendly name. They have sustainably-harvested bamboo floors, biodegradable to-go cartons and plan to run on green electricity soon. “The menu is pretty close to what we eat in Thailand,” said Dan Sriprasert in a recent Maine Switch article. “But in Thailand, we have really strong flavors, so this is a little more mild.” But, he adds, “If they want spicy, we can make it spicy.” The Green Elephant is located at 608 Congress St. in Portland. 207-347-3111

**Maine Hockey Group (MHG)**

The new MHG Ice Centre in Saco is now the permanent home for the Portland Junior Pirates. Sean O’Brien, MHG president, reported that this new sports complex will allow the Pirates to make their own hours, have a consistent schedule and grow even more. Students from Thornton Academy, Massabesic High School and Scarborough High School, as well as local figure skaters, are also using the facility. In addition, Portland Junior Pirates Skating Schools provide skating lessons to the general public. Our own Joyce Broadwater is heavily involved with the MHG. Her son Nick, a senior at Deering High School, is in his third year as the Portland Junior Pirates goalie. He’s getting major interest from Division 1 college hockey programs and has a possible future in the NHL. (Go, Nick!) [www.mhgice.com](http://www.mhgice.com)

**Leavitt & Sons Specialty Grocery and Deli**

Last October, Pete and Marie Leavitt opened Leavitt & Sons on the corner of Route One and Depot Road in Falmouth. Pete used to be his own boss and then worked in corporate offices for a while, but he really wanted to go back to operating his own place related to the food industry. He told us, “Marie actually suggested a specialty food place, and I loved the idea.” They offer 50 different kinds of cheese, Boars Head® deli meats, pates, olive oils, pestos, jams, and various organic pantry items. On Monday through Saturday, they offer a lunch menu of sandwiches and soups. They also have a full-time chef that creates prepared dinners from scratch, ready to go. Pete reported that business is going very well, especially at lunchtime. Sign up for their weekly menu e-mail by visiting [www.leavittandsons.com](http://www.leavittandsons.com).

**INSIDE**  
**Tax**  
**Deadlines**

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