Changes to *Paying Workers in a Homeschool Organization* 3rd edition

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released November 2017

A year after *Paying Workers in a Homeschool Organization* (2nd edition) was released in November 2016, several events occurred that required me to research the issue of worker classification for homeschool organizations. As a result of my research, I have made these changes to the book and released a 3rd edition.

1. **In Chapter 2 Paying Board Members and Other Leaders offered comfort letter**

I offer a service to determine if the compensation or discounts offered to board members are insignificant with respect to the IRS definition. I write a letter called a comfort letter that can be used by board members to support their view that insignificant benefits are not taxable. This comfort letter is also helpful to pass down to future board members. Contact me at HomeschooLCPA.com/Contact of you are interested in this service.

1. **In Chapter 2** **Example of a Board Voting Itself Compensation added these two paragraphs**

Instead of voting themselves compensation, the board had options including allowing the members to vote, creating a compensation committee or hiring help. If the organization has voting members (check the Articles of Incorporation and the bylaws), then a vote on board compensation can be voted on by the membership. The bylaws may need to be amended to allow for a membership vote on board compensation.

 Another option would be for the board should not seek compensation at all, but rather hire help. A bookkeeper could be hired to do some of the work the treasurer is doing. The board could hire an executive director or staff to handle day-to-day problems, so the board is not carrying the burden of daily operations.

1. **In Chapter 3 Employee or Independent Contractor? added this paragraph**

**Your organization’s right of supervision and control over the worker is the critical issue**. Many of the other factors covered in this chapter are tools to uncover evidence of control or lack of control. Always focus your attention on the control factor.

There are not a lot of IRS rulings or Tax Court cases involving homeschool organizations, but we can use colleges and universities as a guide. There are several IRS rulings and Tax Court cases involving the worker status of part-time adjunct instructors. Adjunct professors operate much like homeschool teachers According to Bertrand M. Harding, an attorney and author of *The Tax Law of Colleges and Universities*, IRS agents have determined that,

"because instruction is such a basic and fundamental component of a college or university, individuals who are hired to provide instruction should always be treated as employees because the school is so interested and involved in what they do that it will always exercise direction and control over their activities”

I feel confident in saying that the same is true for homeschool organizations. Because instruction is a fundamental component of a homeschool organization, instructors, tutors and teachers should be treated as employees because the homeschool group will always exert control over these workers.

Additionally, since teachers in a homeschool program are working closely with children, it is expected that your organization will exert significant control over the teachers. For the safety of the children, you need to have the right to exert control over the teachers. If your group has behavioral, moral or spiritual guidelines that you wish teachers to follow because they are examples to the children they teach, you are exerting significant control over them.

1. **In Chapter 3 IRS Offers a Safe Harbor for Worker Classification added the fourth factor the IRS uses in determining an employer had a reasonable basis for classifying a worker as an Independent Contractor**

Other reasonable basis including reliance upon advice from an accountant or attorney (but only if that advice was relied upon when treatment of workers as independent contractors began). Although the IRS doesn’t require it, I recommend you get this advice in writing on the letterhead of the lawyer or accountant.

1. **In Chapter 3 FAQ added two additional question to:**

**Q: What are consequences of misclassifying workers? Will I go to jail? Are there back taxes to pay?**

A: Under Internal Revenue Code section 3509 the penalties for worker misclassification include paying a portion of federal income tax (1.5% of payroll), employer (100%) and employee shares of FICA taxes (20%) and federal unemployment compensation taxes (FUTA). In addition penalties for missed deposits (10%) and withholdings (20%) can be assessed. Additional penalties include: $50 for each Form W-2 that the employer failed to file because of classifying workers as an independent contractor and a Failure to Pay Taxes penalty equal to 0.5% of the unpaid tax liability for each month up to 25% of the total tax liability.[[1]](#footnote-1)
These fees and penalties add up. Fortunately, the IRS offers two relief provisions: Section 530 of the Revenue Act of 1978 called the Safe Harbor provision (mentioned earlier in this chapter) and the Voluntary Classification Settlement Program (VCSP) frequently called an amnesty program. Please read the IRS webpage about the VCSP (<https://www.irs.gov/businesses/small-businesses-self-employed/voluntary-classification-settlement-program>) or contact me (Carol@HomeschoolCPA.com) for details on the program.

**Q: What if the parents pay the teachers and not my organization? Can I still have the teachers sign an agreement?**

A: If the parents pay the teachers, then your homeschool organization does not have a legally binding contract with the teachers. In order for a contract to be legal, proper, and binding there has to be the exchange of money (or property). In legal terms this transfer of money is called "consideration." Since your organization is not paying the teachers, there is no "consideration" and therefore no legal contract.

Instead you could create a Memorandum of Understanding (MoU) with each teacher. In the MoU you might state, "If you want to use our space to teach your class, you need to understand these items..." A MoU is not legally binding, but it is a tool of communication between your organization and the teachers using your space. There is a sample Memorandum of Understanding in the Appendix.

1. **In Chapter 4 Substitutes added and eliminated the following:**

According to the IRS, an independent contractor retains the right to subcontract out their work. So they should be responsible for hiring and paying for a substitute. You may wish to retain the right to approve the sub beforehand out of concern and safety of the children. Mention these issues in the independent contractor agreement. One homeschool group included a paragraph stating:

Independent contractor is responsible for finding a substitute if contractor are unable to perform the duties outlined in this agreement. Contractor is responsible for all compensation owed to such individuals. The Organization reserves the right to require approval of the substitute.

~~Who provides the substitute, the independent contractor or your homeschool organization? Will the substitute be the volunteer classroom assistant? Does your homeschool group want to approve the substitute teacher beforehand? Will the substitute be paid by the independent contractor or by your organization?~~

1. **In Chapter 4 Avoid Controlling Your Independent Contractor made the following elimination.**

 ~~They could increase the likelihood of properly treating the teachers as independent contractors by hiring teachers who are already trained in their methods and views of instruction, not require training (i.e., make it optional), and change their evaluation to focus on the completion of the tasks listed in their agreement and not focus on the teacher’s style of teaching. Or~~ they ~~could~~ should hire the teacher as an employee.

1. **In Chapter 4** **How You Pay Your IC May Affect the Property Tax Exemption for Your Host Church added the following sentences**

Other states forbid churches from using their property for use by organizations with a “view to profit.” Illinois takes a hardline on non-exempt use of a church. One Classical Conversation director emailed me in frustration because she could not find a church o host her for-profit CC Community because it was operated with a “view to profit.”

1. **In Chapter 4 FAQ on Independent Contractors added an additional question and answer**

**Q: I am a Classical Conversations Director in Illinois. Our church is asking us to leave as they believe hosting us threatens their tax exempt status. Other churches who have heard this claim do not want to accept us. Any advice?**

A: The church worried about their property tax exemption in Illinois since your CC community is a business with a "view to profit" and not a religious nonprofit. The only advice I have is to ask the church if they would offer space to your CC community if it were a nonprofit organization and then consider re-forming as a nonprofit organization. I can help with that.

1. **In Chapter 5 Tax Forms for Independent Contractor added a Frequently Asked Questions section with a question and answer**

Frequently Asked Questions

**Q: I’m a Classical Conversations Director. I and one other person are the only tutors. I gave her a 1099-MISC for teaching one class and gave myself a 1099-MISC for teaching the other class? Is this correct?**

A: No, it is not correct to give yourself a 1099-MISC. This is not the correct way to report your income as a Classical Conversations (CC) Director. As a business owner (and I'm referring to a sole proprietorship filing a Schedule C on their Form 1040) a CC Director is not paid as an independent contractor. Business owners are not "paid" at all. Instead they get to keep all the profit that the business makes. That profit is their "pay" or earnings from the business. My book *Taxes for Classical Conversations Directors* will help you prepare your tax forms correctly. Find it at HomeschoolCPA.com.

1. **In Chapter 8: Sample Independent Contractor Agreements deleted the long, legally complex Independent Contractor agreement.**
2. **In Chapter 8 added this warning to Independent Contractor agreements**

 *Use at your own risk, knowing that in general teachers or tutors in an educational program should be treated as employees, not independent contractors.*

1. **In Chapter 8: Sample Independent Contractor Agreements added an Employment Agreement.**

Employment Agreement

*This agreement is designed for a teacher or tutor hired as a part-time, seasonal employee with no benefits. It is very short and simply covers the most pertinent information.*

**Teacher Agreement with**

**Name of Organization**

**for \_\_\_\_\_** *(year)*

Teacher Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Service(s) provided: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Compensation: $\_\_\_\_\_\_\_\_\_ /month beginning \_\_\_\_\_\_\_\_\_\_ *(starting date*) through \_\_\_\_\_\_\_ *(ending month)*

\_\_\_\_\_I agree to perform the duties I have been assigned in a professional manner and in compliance with any rules, regulations, and requirements set forth in the Organization’s Policy Manual.

\_\_\_\_\_ I will show up on time and be fully prepared to perform the duties I have been assigned.

\_\_\_\_\_I agree to submit to a background check, at the expense of the Organization’s, no later than \_\_\_\_\_\_\_\_\_\_ *(date).* I understand that a criminal history record acceptable to the Organization at its sole discretion is a condition of this agreement.

\_\_\_\_\_If I wish to terminate my position I must give \_\_\_ days’ notice. My compensation will be prorated by the days worked in the month.

\_\_\_\_\_All reimbursable expenses will be approved before incurring an expense. I agree to request reimbursement within 30 days of the expense and will include receipts.

\_\_\_\_\_All supplies, curricula, and lesson plans are property of the Organization and may not be distributed to anyone other than the Organization students, and must be returned to the Organization at the end of the \_\_\_\_\_ school year or upon exiting the program.

\_\_\_\_\_No benefits except those required by law (workers compensation and unemployment compensation) are given including no paid sick days, no vacation days, no health benefits.

\_\_\_\_\_Failure to report for work due to illness or time off (vacation) will mean an adjustment (decrease) in my monthly compensation.

\_\_\_\_\_I agree to maintain appropriate confidentiality with regard to teacher, student, parent and the Organization’s matters. I will not gossip or involve volunteers, parents or others. If I have concerns about a student or situation, I will direct them to the Organization Director or Board of Directors.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_

Teacher Signature Date

1. **Un Chapter 8: Sample Independent Contractor Agreements added a Memorandum of Understanding.**

Memorandum of understanding for teacher paid by parents, not the Organization

*This is a letter a homeschool organization could give to a teacher who is not paid by the homeschool organization, but rather is paid directly by the parents. It is not a legal contract because there is no money being paid to the teacher (in legal terms the transfer of money or property is called consideration and is required for a legal contract).*

**Memorandum of Understanding**

Between Teacher

andHomeschool Group for \_\_\_\_\_ *(year)*

This document is to serve as an understanding of the arrangement allowing \_\_\_\_\_\_\_ (Teacher) use of the Organization’s facilities to conduct her classes.

Homeschool Group is responsible for:

* Securing a facility for use
* Registering students
* Providing Teacher with a class list and student emails by \_\_\_\_\_\_*(date).*

Teacher is responsible for:

* Conducting a class titled \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(subject)* on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ *(date and time)*
* Adhering to Organization’s Policy Manual
* Collecting payments directly from parents
* Purchasing all supplies necessary for teaching her class
* Providing a substitute pre-approved by Organization
1. “Fines and Ramifications” Net Polarity <http://www.netpolarity.com/fines-and-ramifications.html> [↑](#footnote-ref-1)