



# NewsLine

*The Official Publication of the Tennessee Auctioneers Commission Volume XLV—Spring 2013*

## Table of Contents

Page One	Auction Commission Report Legal Reminder: Escrow
Page Two	Employee vs. Independent Contractor
Page Three	Am I Self-Employed? Continuing Education
Page Four	Continuing Education, May 2013

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At-Large Member Expires 08/31/2014

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## Mission Statement

The Mission of the Tennessee Auctioneers Commission is to protect the public and licensees by monitoring the auctioneer profession through licensure and regulation

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## AUCTIONEER COMMISSION REPORT

The Commission held its first meeting back in the Davy Crockett Tower at 500 James Robertson Parkway on March 4, 2013. The TAC offices were moved from Davy Crockett Tower in 2008. The Commission offices are scheduled to move back to Davy Crockett Tower in early May. The April 1, 2013 TAC Board meetings will be held in the first floor conference room of Davy Crockett Tower. Meetings begin at 9:00 a.m. (central) unless otherwise posted. The public is invited to attend.

The Commission continues to draft language for proposed rule changes with the intent of clarifying several legal confusions: namely the licensing of non-auctioneered owned firms and internet-only auctions.

The Commission has added Licensing Technician, Stacey Allen, to the staff. Stacey came to the TAC in January. Previously, she was in the Information Technology (I.T.) Department of Vol State. She is currently finishing work on her Bachelor's degree in Criminal Justice and Law.

The Commission currently has 204 active apprentice auctioneers licensed, and 1581 active auctioneers. There are currently 954 active firm licenses, 37 branch firm licenses, 77 licensed galleries and 3 gallery branch licenses.

In 2011, 57 candidates were issued the apprentice license examination with a 92.16% pass rate; 29 candidates were issued the auctioneer examination with a 96.3% pass rate; 10 candidates took and passed the gallery license examination; and 4 candidates took and passed the non-auctioneer firm license exam.

In 2012, 56 apprentice candidate tested with a 92% pass rate; 36 auctioneer candidates tested with a 94.12% pass rate; 19 gallery candidates with a 74.74 pass rate; and 6 non-auctioneer firm candidates tested with a 100% pass rate.

**LEGAL REMINDER: 62-19-112. Denial, revocation or suspension of license by commission - Retirement of license.**

(b) The commission may suspend, revoke or refuse to renew any license issued under this chapter where such license has been obtained by false or fraudulent representations, or for any of the following causes:

**...(4) Failing to account for or remit, within a reasonable time, any money belonging to others that comes into the licensee's possession, commingling funds of others with the licensee's own or failing to keep the funds of others in an escrow or trustee account;...**

**The term commingling is most often applied to funds or assets. When a fiduciary, a person entrusted with the management of funds other than his or her own in trust, mixes trust money with that of others, the fiduciary is commingling funds and thereby breaching his or her fiduciary duty.**

West's Encyclopedia of American Law, edition 2. © 2008 The Gale Group, Inc

# Employee vs. Independent Contractors

It is critical that business owners correctly determine whether the individuals providing services are employees or independent contractors.

Generally, you must withhold income taxes, withhold and pay Social Security and Medicare taxes, and pay unemployment tax on wages paid to an employee. You do not generally have to withhold or pay any taxes on payments to independent contractors.

If you are a business owner hiring or contracting with other individuals to provide services, you must determine whether the individuals providing services are employees or independent contractors. Follow the rest of this page to find out more about this topic and what your responsibilities are.

Before you can determine how to treat payments you make for services, you must first know the business relationship that exists between you and the person performing the services. The person performing the services may be : An independent contractor, an employee (common-law employee), a statutory employee (e.g. sales persons), or a statutory nonemployee (e.g. real estate agent).

## Common Law Rules

Facts that provide evidence of the degree of control and independence fall into three categories:

1. **Behavioral:** Does the company control or have the right to control what the worker does and how the worker does his or her job? The behavioral control factors fall into the categories of: type of instructions given, degree of instruction, evaluation systems, and training.
2. **Financial:** Are the business aspects of the worker's job controlled by the payer? (these include things like how worker is paid, whether expenses are reimbursed, who provides tools/supplies, etc.). The financial control factors fall into the categories of: significant investment, unreimbursed expenses, opportunity for profit or loss, services available to the market, and method of payment.
3. **Type of Relationship:** Are there written contracts or employee type benefits (i.e. pension plan, insurance, vacation pay, etc.)? Will the relationship continue and is the work performed a key aspect of the business? The factors, for the type of relationship between two parties, generally fall into the categories of: written contracts, employee benefits, permanency of the relationship, and services provided as key activity of the business.

Businesses must weigh all these factors when determining whether a worker is an employee or independent contractor. Some factors may indicate that the worker is an employee, while other factors indicate that the worker is an independent contractor. There is no "magic" or set number of factors that "makes" the worker an employee or an independent contractor, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another. The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

## Form SS-8

If, after reviewing the three categories of evidence, it is still unclear whether a worker is an employee or an independent contractor, Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding (PDF) can be filed with the IRS. The form may be filed by either the business or the worker. The IRS will review the facts and circumstances and officially determine the worker's status.

Be aware that it can take at least six months to get a determination, but a business that continually hires the same types of workers to perform particular services may want to consider filing the Form SS-8 (PDF).

## Consequences of Treating an Employee as an Independent Contractor

If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker (the relief provisions, discussed below, will not apply). See Internal Revenue Code section 3509 for more information.

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**For more information: Read IRS Publication 15-A at [www.irs.gov/publications/p15a/index.html](http://www.irs.gov/publications/p15a/index.html)**

# Am I Self-Employed?

Generally, you are self-employed if any of the following apply to you:

- You carry on a trade or business as a sole proprietor or an independent contractor.
- You are a member of a partnership that carries on a trade or business.
- You are otherwise in business for yourself (including a part-time business)

## What are My Self-Employed Tax Obligations?

As a self-employed individual, generally you are required to file an annual return and pay estimated tax quarterly.

Self-employed individuals generally must pay self-employment tax (SE tax) as well as income tax. SE tax is a Social Security and Medicare tax primarily for individuals who work for themselves. It is similar to the Social Security and Medicare taxes withheld from the pay of most wage earners. In general, anytime the wording "self-employment tax" is used, it only refers to Social Security and Medicare taxes and not any other tax (like income tax).

Before you can determine if you are subject to self-employment tax and income tax, you must figure your net profit or net loss from your business. You do this by subtracting your business expenses from your business income. If your expenses are less than your income, the difference is net profit and becomes part of your income on page 1 of Form 1040. If your expenses are more than your income, the difference is a net loss. You usually can deduct your loss from gross income on page 1 of Form 1040. But in some situations your loss is limited. **See Pub. 334, Tax Guide for Small Business (For Individuals Who Use Schedule C or C-EZ)** for more information.

You have to file an income tax return if your net earnings from self-employment were \$400 or more. If your net earnings from self-employment were less than \$400, you still have to file an income tax return if you meet any other filing requirement listed in the *Form 1040 instructions (PDF)*.

## How Do I Make My Quarterly Payments?

Estimated tax is the method used to pay Social Security and Medicare taxes and income tax, because you do not have an employer withholding these taxes for you. Form 1040-ES, Estimated Tax for Individuals (PDF), is used to figure these taxes. Form 1040-ES contains a worksheet that is similar to Form 1040. You will need your prior year's annual tax return in order to fill out Form 1040-ES.

Use the worksheet found in Form 1040-ES, Estimated Tax for Individuals to find out if you are required to file quarterly estimated tax.

Form 1040-ES also contains blank vouchers you can use when you mail your estimated tax payments or you may make your payments using the Electronic Federal Tax Payment System (EFTPS). If this is your first year being self-employed, you will need to estimate the amount of income you expect to earn for the year. If you estimated your earnings too high, simply complete another Form 1040-ES worksheet to refigure your estimated tax for the next quarter. If you estimated your earnings too low, again complete another Form 1040-ES worksheet to recalculate your estimated taxes for the next quarter.

## Online Learning Tools

The Virtual Small Business Tax Workshop is composed of nine interactive lessons designed to help new small business owners learn their tax rights and responsibilities. It is available online and on a CD - Publication 1066C, A Virtual Small Business Tax Workshop. The IRS Video Portal contains video and audio presentations on topics of interest to small businesses, individuals and tax professionals.

Reprinted from [http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-\(Self-Employed\)-or-Employee%3F](http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Independent-Contractor-(Self-Employed)-or-Employee%3F)

**For more information: Read IRS Publication 15-A at [www.irs.gov/publications/p15a/index.html](http://www.irs.gov/publications/p15a/index.html)**

## Continuing Education

### 0160-3-.03 BASIC REQUIREMENTS

- (1) All licensees including auctioneer licensees, apprentice auctioneer licensees, gallery licensees, as well as non-auctioneer firm owners, except as otherwise provided by T.C.A. §62-19-106(e) and these rules, must obtain six (6) hours of continuing education per renewal cycle in order to renew a license, except as provided for in T.C.A. §62-19-106(e)(2).**

This means all licensees are required to obtain six (6) hours of continuing education in order to renew their license. The Commission provides three (3) CE Seminars for licensee across the state each year: Winter CE is in West TN, spring is in Middle TN and the fall CE is held in East TN. See the back of this edition of Newsline for information on the Spring CE.

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## Continuing Education Seminar

*Monday, May 20, 2013*

*9:00 a.m. (Central)*

*Wilson County*

*James E. Ward Agricultural Center*

*945 Baddour Parkway*

*Lebanon, TN 37089*



**We will be in the East Building pictured above.  
The Ward Ag Center is located 1.5 miles off I-40  
at Exit 239.**

## Selling Firearms at Auction

2 Hours

*Featuring*

**Agent Bill Gallivan**

**The Bureau of Alcohol, Tobacco, Firearms & Explosives**

Agent Bill Gallivan will be accompanied by agents from  
the Middle Tennessee office for this presentation.

*And.....*

**Contracts**

**and**

**The Uniform Commercial Code**

4 Hours

*Featuring*

**John Shultz**

John is a leading expert in how our use of technology  
in the auction industry is changing and how we handle  
contracts and UCC compliance.

***\*\*Please have your pocket card available  
at registration\*\****



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