

## **Homeschool educators, independent contractors or employees?**

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### **ABSTRACT**

Erin, a tutor for a homeschool cooperative (co-op), Intellectual Discourse for Kids (IDK) has been asked to take the position of Co-op Leader. Erin has concerns about taking over the co-op because she is not sure whether the tutors are considered independent contractors or employees for tax purposes. Rachel, the current leader, has paid the tutors as independent contractors because that is how it has always been, and she did not know there might be a different way. Erin has limited tax knowledge and thinks that tutors may be considered employees. Prior to accepting the position, Erin would like to find out definitively whether the tutors are employees or independent contractors. The case requires to students to identify the relevant facts to determine whether tutors are independent contractors or employees. The students are also asked to perform tax calculations to find out which classification is more advantageous for the tutors.

Keywords: Independent contractors, employees, taxation

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## **INTRODUCTION**

After a long November day of tutoring her students, Erin was packing up her supplies and materials, and getting ready to pick up her children from the other room. Erin looked up and saw Rachel, the Co-op Leader of a local homeschool co-op, walk into her classroom.

“Erin, I hope you had a great day! I observed you during the science lesson and thought you used a great vocabulary game.” Rachel continued, “As you know, my husband is being re-stationed next year, so I will not be able to continue as the Co-op Leader of the co-op. I have talked with some of the other parents and tutors about who a good Co-op Leader might be, and your name kept coming up. Would you consider being the Co-op Leader next year?”

Flattered by the sudden proposal, Erin said “I am honored! Of course, I will have to pray and talk to my husband about it.”

“Absolutely, take some time to think about it and we can talk again next week,” Rachel said as she left the room.

Erin was caught off guard: this was her third year as a tutor with Intellectual Discourse for Kids (IDK) and she really enjoyed the homeschool co-op she and her children worked and learned at, but she had never thought about being Co-op Leader of the entire co-op, at least not this soon.

As Erin continued to pack up, she began to think about some of the concerns she had with IDK. Within her co-op, she had always been paid as an independent contractor, although from what little she knew of taxation she thought she might actually be an employee for tax purposes. Previously, Erin gave this little thought because she knew she had a little risk even if she was actually an employee because she always paid her taxes. If she was to be the Co-op Leader, then she would have to make the choice whether the tutors were employees or independent contractors. Ultimately, she would have to bear the responsibility if the wrong decision was made.

## **INTELLECTUAL DISCOURSE FOR KIDS**

IDK is a large local homeschool cooperative (co-op) made up of many different families who homeschool their children. All of the families utilize the same homeschool curriculum.

IDK is one of many similar co-ops across the nation. Erin works as a tutor at a co-op with 50 students in ages from preschool – sixth grade. The class sizes vary, and Erin happens to have a class size of eight. The co-op is comprised of three key roles, other than the students: the Co-op Leader, the tutors, and the parents.

The Co-op Leader is in charge of the co-op and has control over how the co-op is run and bears the risk and responsibility for anything that goes on in the co-op. The Co-op Leader makes all admission decisions and is also in charge of hiring the tutors. The Co-op Leader can terminate any tutor at any time for any reason, but the tutors must give one month of notice prior to leaving. In addition, the Co-op Leader determines the class sizes. The Co-op Leader also chooses what day of the week the co-op meets.

The tutors sign a contract with the Co-op Leader to teach for the entire school year. IDK is very insistent that the tutor is not a teacher, merely a facilitator. The tutor introduces the material the students will be working on for the next week. Rachel has asked all of the tutors to facilitate the teaching of subjects in a specific order, to preserve consistency throughout the courses. Rachel has the tutors teach history, science, language arts, and then review.

The Co-op Leader runs a training prior to the beginning of the school year where they go over the curriculum for that year. All of the tutors of the co-op meet once a month with the Co-op Leader to plan for the month. This planning meeting is a discussion of what the tutors are teaching during the next month. The tutors all teach separate age levels.

The Co-op Leader does have the ability to require the tutors to use certain curriculum materials such as some vocabulary cards that come with the curriculum the co-op utilizes. However, the tutors have discretion over how they utilize these materials. The tutor can also teach vocabulary partially using the cards, and partially using their own technique. The tutors are also encouraged to make all of the lessons as reproducible as possible so the parents who sit in the back and observe every lesson can use the material at home to teach their own children.

The parent is the primary teacher of their children and is expected to work with their children every day and teach the children the lessons for the week while reviewing the information the child previously learned. The parent can use the method of teaching the tutor introduced or teach their student the week's lessons in any way they please. Parents register their children in the spring for the following academic year, there is a down payment of \$50 to reserve the student's spot and it is used towards tuition. By July, each parent must pay the remaining tuition of \$250 and the supply fee of \$25 per student to the Co-op Leader of the co-op. Parents must also buy any books or curriculum support materials, which vary in price and the prices are set by an outside organization.

## **ERIN**

Erin is a homeschool mother of two children, Whitacre (7) and Lilly (5). She has been married to her husband Jacob for 10 years. Erin has both a bachelor's and a master's degree in communications arts. Though Erin has no previous teaching experience, this is Erin's third year serving as a tutor for the IDK co-op, located in northern Virginia.

Prior to becoming a tutor, Jacob and Erin had to decide how to educate Whitacre and Lilly. Jacob and Erin decided to home school their children instead of sending them to public school. As Erin and Jacob were looking at homeschool curriculums, they decided to go with IDK because of the "structure of information to follow through the school year, but also the flexibility to delve deeper into specific subjects." Erin and Jacob felt that there would be more accountability and support in their children's homeschool experience if they joined a homeschool co-op.

After deciding on IDK and becoming a tutor, Erin has served under two different Co-Op Leaders, and this is her second year working with Rachel. Erin is paid monthly out of Rachel's personal bank account. Just like any other tutor, Erin is able to take time off of work if one of her children is sick or for a preplanned trip, but she is responsible for finding her own substitute. If she creates the substitute plan then she gets 40% of her regular pay, and the substitute teacher gets 60%. The substitute can create the lesson plan, but if that is the case then the substitute gets the 100% of Erin's pay for that day. For the current calendar year, she has taken no time off of work and does not plan to take time off before the New Year. Erin has always received a 1099-misc and has completed her taxes as an independent contractor.

She knows that there is a small budget for supplies available to her from the Co-op Leader but she only asks to use money from that budget for large items, generally, science experiment related. Erin must provide any supplies necessary for her to complete her job, depending on the subjects she is tutoring. Erin also provides classroom supplies such as

whiteboard markers, tape, or small nerf guns for a learning activity. Erin doesn't deduct these expenses because she utilizes this material at home with her two children and doesn't feel right about taking the deduction. She estimates that she spends around \$500 dollars a year on supplies, she keeps all of her receipts but doesn't add all of the receipts up since she doesn't take the deduction.

Jacob works a white-collar job and makes \$100,000 a year before taxes. Jacob and Erin donate \$7,580 a year to various charities and Jacob spent 20 hours during the year volunteering his time to make repairs to his parent's house.

## **RACHEL**

Rachel is the Co-op Leader of the northern Virginia IDK co-op and is a military wife with two children. Rachel's husband, Nathaniel, is being transferred to a different military base at the end of this school year. After being involved with this IDK co-op as a parent and tutor for several years, Rachel was asked to be the Co-op Leader. Although she knew there was a chance their family could be transferred to a different base at any time, Rachel accepted and this is her second year of being the Co-op Leader.

Rachel receives the tuition and supply fees from the parents and deposits them in a bank account. This money is kept in a separate bank account from her family finances. Rachel pays the tutors on a monthly basis. The tutors receive a percentage of the tuition fees allocated by the number of students in the tutor's class. The Co-op Leader will use the supply fund for supplies that the students need to use in the classroom. Tutors must provide all of their own supplies. Rachel pays the tutors as independent contractors because that is how she was paid when she was a tutor.

As Co-op Leader, Rachel makes all operational decisions of the co-op. She determines where and what day the co-op meets. Rachel gives the tutors direction when they need it but does not tell them how to run their classrooms. Rachel does not give the tutors formal evaluations.

## **NEXT WEEK**

Over the course of the week, Erin and Jacob had several discussions about the possibility of becoming a Co-op Leader for the co-op. They talked about how the additional responsibility would affect their lives and decided that they were willing to make the sacrifices necessary for Erin to accept the position. Prior to making the final decision, Erin and Jacob talked about the possible business risk. After several discussions and research, Erin and Jacob were still unsure how the tutors should be treated for tax purposes. They decided they were not willing to take on the risk, and Erin declined to become the Co-op Leader next year.

## **DISCUSSION QUESTIONS**

Answer the following questions. Optional: utilize IRS materials to support your answers.

1. Utilizing the list provided in Appendix A, evaluate the facts of the case and whether they are characteristic of an employee or an independent contractor.
2. Building on your answer from question one, decide Erin's tax classification.

3. Perform the tax calculations for Erin as if she was an independent contractor and if she was an employee. If Erin's goal is to reduce her tax liability which status does she prefer?
4. From Rachel's perspective, compare and contrast the tax differences between classifying tutors as independent contractors or as employees.

## **APPENDIX A**

### **Independent Contractor versus Employee Factors**

#### **Behavioral Control**

- Type of Instructions Given
  - Employees are generally subject to strict instruction about when, where, and how to work.
- Degree of Instruction
  - The greater the detail of instruction (relative to the job) the more likely an employee.
- Evaluation systems
  - An evaluation system measuring the details of the work performed points to an employee, if just the end result is measured, then the status can be an employee or independent contractor.
- Training
  - Training on how to specifically perform the job points to an employee relationship, independent contractors are ordinarily allowed to use their own methods.

#### **Financial Control**

- Significant Investment
  - An independent contractor generally has a significant investment in the equipment he or she utilizes, although some positions do not require significant investment.
- Unreimbursed expenses
  - Independent contractors are more likely to have unreimbursed expenses, although employees may also have unreimbursed expenses.
- Opportunity for profit or loss
  - The ability to incur a loss is an indicator of an independent contractor
- Services available to the market
  - An independent contractor is free to seek out business opportunities and advertise and is available to work in the relevant market.
- Method of Payment
  - Employees are guaranteed a regular pay amount for a regular period of time. Independent contractors are paid a flat fee for the job.

#### **Type of Relationship**

- Written Contracts
  - A contract may specify the working relationship although the IRS is not bound by the contract.
- Employee Benefits
  - Independent contractors are generally not offered benefits, although some employees do not have benefits.
- Permanency of the Relationship

- Employees are hired with the expectation that the relationship will continue indefinitely.
- Services Provided as a Key Activity of the Business
  - If a worker provides services that are a key aspect of the business, it is more likely that the business will have the right to direct and control his or her activities. This indicates an employer-employee relationship.

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