



As an organization of **Independent Business Aviation Contract Professionals** we would like to comment and end the debate of the **IRS 20 Question Test**, which has gone on long enough and "scared" a number of Operators. It's time for clarification, and maybe time the Operators understood there is a more professional level of Contractor available to support you.

In a perfect world, no Operator would ever need outside help. This is not a perfect world. With the ever increasing costs of training, medical insurance, taxes, benefits and advertising, the number of true, dedicated, full time **Professional Aviation Contractors--Pilot or Flight Attendant--is** dwindling. Ironically, this impacts both Operators and the Agencies. For the purpose of this response and shortening it, we will use the acronym "PAC" for Professional Aviation Contractor.

The IRS 20 question test, nor the version provided by Mr. Soderholm was written for aviation, much less aviation professionals. Its main purpose is to determine whether an individual is an "employee" or an "independent contractor" for tax purposes.

A "TRUE" PAC provides their services in the form of a Corporation, LLC or dba. Therefore, all billable services are those of a Vendor to the Customer. All State and Federal taxes, workman's comp, unemployment taxes, legal and accounting fees are the sole responsibility of the Vendor (PAC). Clearly, the IRS 20 question rule does not apply here, but in the spirit of proving it, read on.

If we examine the true PAC and apply the rule as stated in the IRS Publication 15-A, we find that the true Independent Contractor (IC) arrives at the job with his or her own set of tools. For the PAC these "tools" consist of an inventory of skills, knowledge and experience required to get the job done safely. The IC is not told where to purchase supplies and services nor is he told in what order or sequence to follow to get the job done. The PAC is not told what workers to hire. The PAC's main and only purpose is to provide support. That is the main reason he/she was called for the job in the first place--To take the place of an individual that is either on vacation, out sick, in training or not yet hired--for whatever reason. The PAC is temporarily filling in for a full time employee so that the business can get the job done.

Financial Controls

Contracts & Expenses. No PAC takes a contract job without some form of agreement. Frequently, this is a verbal agreement, but may be another form of documentation. Example: If the contractor confirms their availability and verbally tells the Operator that the daily rate is \$800 USD/day + expenses, this is a contract. PACs also set their own daily rates and expense reimbursement policies. While there may be some room for negotiation, we simply do not accept the job if the Operator does not meet our company policies. In addition, PACs will ALWAYS have reimbursable expenses. This is not "supplemental income". We are all trying to make a living so why would we pay our own expenses to be able to work for an Operator?

We also meet the *"extent to which the worker can realize a profit or loss"* rule. Any pilot who is paying for recurrent training on more than one type rating understands that a significant portion of the yet-to-be-earned income goes for training and training related expenses. If the work does not materialize, or there is an unexpected illness or injury that disables the pilot, the term "Financial Loss" becomes very real.

Training:

PACs pay for their own training. They determine who, when and where the training will take place. The Operator only determines if the PAC's training and experience meet their needs and insurance requirements. If an Operator wishes to pay for a PAC's training, it does NOT automatically make the PAC an employee. It simply means that the Operator required them to have a particular type of training at their expense, so the contractor would be better able to perform the contract job to the Operator's standards. Whatever agreement is made between the Operator and the Contractor is an agreement between Businesses, not individuals. When applicable, the PAC will invoice the Operator for the training as a reimbursable expense so there is no possible inferred employer/employee relationship.

"How the business pays the worker." As a PAC we solicit work as an employee of our own Business. Any compensation or reimbursable expense is paid directly to the company which in turn pays us, the PAC. Any relevant expenses, taxes, workers compensation, unemployment taxes etc. are all paid by the PAC's Business. In no instance is any compensation ever received by the individual contractor.

Relationships

"The extent to which the worker makes his or her services available to the relevant market"

As a PAC my services are available to all business. Word of mouth is generally the best advertiser; however the serious PAC is registered on several web sites and advertises in various Aviation Industry related media. In short, the PAC will use every means available to solicit new business. Finding new business, as with any other business is simply part of being a Business Owner.

The third and final test is the "Type of relationship" the parties intended. The most important aspect of this test is the *"permanency of the relationship"*. All of the jobs that PAC's accept are finite in nature. That is, they have a beginning and an end, so there is no intent that the business relationship will continue indefinitely. The "relationship test" goes on further to ascertain whether "employee-type benefits are provided by the business. It is the PAC's own business that provides these "employee-type" benefits, not the clients. Therefore no intent to create an employer-employee relationship ever exists.

Since the "Anti-Contract Pilot" article published in BCA in Feb 2006, there has been an enormous amount of fear generated among Risk Managers and Human Resource Departments. Operators, who previously had very satisfactory relationships with PACs, were suddenly forbidden to use these

Professionals by their Risk Managers. Still needing outside support, some were mandated to use Agencies—who use the **EXACT SAME** contract professionals to fill their jobs. Why? Because they are operating under the illusion that by using an Agency they are protected from the IRS and Workers Comp rules. As shown above and in the following Table, this is not the only solution.

Let's look at the *similarities* between Agency Pilots and the PAC who functions as a Business.

Professional Aviation Contractor Functioning as a Business	Agency
Invoices as a company	Invoices as a company
Pays all Federal & State taxes of the Business	Pays Federal & State taxes of the Agency which are passed on to the Operator in the higher fees
Is responsible for and Pays Workers Comp as appropriate to the state of the business entity	Pays Workers Comp as appropriate to the state of the Agency, which may or may not cover the worker in another state.
1099 nor W-2 required of another Business The Contractor's Business is responsible for issuing the appropriate W-2 or K-1 to it's employee or partner of the business	W-2 is required
Benefits paid by the Business	No benefits paid
Operator maintains Quality control and usually knows the Contractor hired	You get whoever is available
Industry Standard Daily Rates	Contractor gets less than standard pay, but the Operator pays a much higher than standard Fee
Training is paid by the Contractor's Business	No training provided
Must be added to the Operator's insurance	Usually added to the Operators insurance

Not much difference to the Operator is there? The reason is simple – *Professional Aviation Contractors functioning as a Business are exactly the same as an Agency.*

Managing the Risks

By using only current and qualified PACs who conduct themselves as a Business, the Operator is free of the worries of the IRS 20 Question rule. The question is where do you find these professionals? The answer is simple.

Five years ago a small group of contract pilots formed an association during an NBAA breakfast meeting. Their goal was to raise the standards of the "contract pilot" to that of a "Professional" or "Independent" contract pilot. The group changed names a couple of times, but it still exists today as a non-profit association—and it is a member of NBAA. When it incorporated in December of 2002, the Bylaws were written to include Flight Attendants. Members are required to be--and function as--a Business entity, have background security checks, drug testing, recent Business Aviation experience, and training currency. The membership requirements were designed to meet or exceed the industry standards, providing operators with a "turn-key" Independent Business Aviation Contract Professional. The group is small because few know about it. However, an Operator can rest assured that if their PAC is an "IBACP Association" member, they've already reduced some of their "Risks".

This response is not intended as an advertisement, as our organization is all volunteer and non-profit. We are the dedicated, full time Aviation Professionals who provide Quality Contract services--for a living--through our own Business entities. We are not just looking for some supplemental income. We just felt it was time to set the record straight, and dispel the fear.

As discussed in this document, the IRS 20 Question rule does not apply to Businesses, so don't be afraid to use your local Professional Aviation Contractor to augment your Operation.

Respectfully Submitted,

The Board of Directors

Independent Business Aviation Contract Professionals Association, Inc. (IBACP Association)

Judy Reif, Vice President of Membership & Standards (full time contract Flight Attendant)

Bill Chiarello, Executive Vice President (full time contract Pilot)

Susan Anderson, President (full time contract Pilot)

www.IBACP.org