THE FINE PRINT – Does it pay to incorporate in a different state?

Corporations and other limited liability entities are creatures of state statute. That means that each state has its own rules for chartering them, and its own requirements regarding fees, taxes, reporting, and disclosure. This would appear to provide a corporation 50 different options to choose from. But when you consider all of the variables involved, legally and financially, it often makes sense to incorporate in your home state.

Each state requires that a corporation be registered in its state in order to do business in its jurisdiction. If you are incorporated in the state where you are domiciled, this happens automatically through the incorporation process. If you incorporate in a state other than where you are domiciled, you will be required to register as a "foreign corporation" in your home state. This is in addition to any obligation you have as a "domestic" corporation, in the state where you are incorporated.

If you are domiciled and incorporated in Wisconsin, your only fee is a $25 annual report fee. Annual reports disclose information regarding corporate structure, ownership information, officers, location of principal office, and registered agent name and address. A registered agent is someone that is authorized to accept legal service on behalf of the corporation. This is dirt cheap compared to the costs of incorporating in many, if not most, other states.

Many states, including Delaware, charge hundreds or thousands

of dollars a year in franchise tax – a tax based on the value of a corporation rather than on income. California's franchise tax is at least $800. This tax is due on top of any annual reporting fees. In addition, if you are operating as a foreign corporation in another state and have no physical presence there, you will be required to hire a registered agent. This will add an additional $50 to $300 a year in fees.

All of these costs have to be evaluated based on their perceived benefit. Delaware has the oldest and most sophisticated corporate law in the country. Additionally, its courts have a reputation for favoring corporate management – a factor in the choice of many businesses to incorporate there. This may help if you're a very large or publicly traded company, but most companies can barely afford to go to court in their home state, let alone hire a Delaware law firm to act on their behalf and to travel back and forth to Delaware to make any appearance. Similarly, states like Nevada are touted as tax-free havens with minimal disclosure requirements. That may be so for domestic corporations, but foreign corporations will still be subject to taxation and disclosure requirements of the state they are domiciled in.

Incorporating in a state other than where you are domiciled adds hundreds, if not thousands, of dollars in operating costs. It also adds an additional level of complexity with regard to reporting requirements, all of which makes it easier to make mistakes and fall out of compliance. The benefits are either illusory or unrealizable for small to medium-sized companies.

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your question to jan@janpiercelaw.com. To protect your privacy, your name will not be published.

THE FINE PRINT – Do I need to collect sales tax if I sell stuff on the internet?

Sales tax is imposed on the sale of tangible personal property sold within the state. (Tangible personal property means stuff that you can touch but isn't real estate.) If it is due, it is due only once. That's why merchants get a seller's permit or sales tax number. It allows them to buy merchandise at the wholesale level they intend to resell. The sales tax is imposed on the customer who purchases the merchandise.

Computers and the internet have made sales tax more complicated. In the good old days, a merchant or manufacturer would buy some stuff and resell it to someone down the road. Now stuff gets sold all over the country and lots of money is tied up in stuff that is not tangible. This means that states are missing out on the opportunity to tax lots of stuff – products that were not tangible and/or not sold by a merchant located within its borders. In response, states have revised their tax laws to include many digital goods and have clamped down on out-of-state retailers selling within their borders.

Sales tax levied on digital products, or on certain services, is more complicated. It often looks like a patchwork of exceptions. If you sell these types of products or services, whether locally or on the internet, you should research the question further. In the case of digital products, it usually revolves around whether the item purchased is a finished product. With respect to services, it depends on whether the merchant installs tangible personal property as part of their service, for example, in a real-property construction activity versus an over-the-counter product.

Regardless of whether you sell a product in a brick-and-mortar store or on the internet, there is no question that you have to collect sales taxable merchandise sold or taxable services performed within your own state. Whether or not you have to collect sales tax for products sold in a different state depends on whether you have a physical presence in that state. This is what's referred to as "nexus." It can be a retail store or a warehouse. An out-of-state delivery made in the merchant's own vehicle also establishes nexus, but merchandise delivered by common carrier does not.

A 1992 Supreme Court case relating to mail order companies ruled that such companies do not have to collect sales tax for states that they sell in unless they have nexus in that state. This same case has been applied to internet sales. The reason that Amazon is now collecting sales tax more than it once did is because it now has nexus in 23 states. At the present time, local DIY artisans, and others who sell on Etsy or Ebay, are not required to collect sales tax for other states.

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THE FINE PRINT – Can female or minority business certification help my business?

Minority and female business certifications came about as a direct and necessary result of government programs designed to give preferences to minority and female owned businesses. The policy goals were laudable – to encourage the growth of businesses owned by individuals who traditionally face higher barriers of entry into the marketplace. Unfortunately, it opened a can of worms – how to determine if businesses were really owned and operated by women or minorities. It is not that unusual for a business that is owned and operated by a man or non-minority to transfer all or a portion of the owner's interest to someone who qualifies, in an attempt to certify that business is minority or woman-owned.

Especially in economic downturns, companies seek to maximize every advantage to preserve income. A great example was what happened during the last recession in the construction industry. Cities, counties, and states were some of the only entities with the financial ability to start new projects. All of a sudden, minority or female businesses had a distinct

advantage in that market. Non-female and non-minority companies went to great lengths to create sham companies to compete for contracts earmarked for those companies.

Over the years, various governmental or private entities have created different methods to verify that businesses are actually owned and operated by women or minorities. In Wisconsin, cities, counties, and the state each have programs that certify companies who do work for them. In addition, there are a couple of private companies that do the same for large corporations that want to show the federal government that they are spending a significant amount of their contracting dollars on female and minority contractors or suppliers.

Whether or not certification will help your business depends on whether you supply a product or service that a city, county, or state needs. The construction industry is a big player in this area. Large corporations like Johnson Controls and Harley-Davidson give preference to female or minority vendors of everything from information technology to law. If you have a product or service that is in demand by these entities, there is no doubt that certification will give you a leg up on the competition. But if there isn’t a demand for your product or service, getting certified won’t make a difference.

Certification is based primarily on two criteria – ownership and control. Ownership is fairly straightforward and is determined based on the percentage of shares owned. As long as the female or minority shareholder owns 51% or more of the company, it qualifies. But that’s not enough. That owner must also be actively involved with, and in control of the business. This is often demonstrated by the owner’s qualifications and actual involvement in day-to-day operations. Resumes are reviewed and site visits are made.

If you are a woman or minority-owned business, certification

is definitely worth looking into. If you haven't started your company yet, you should take special care to make sure that it's done correctly, and that your ownership interest is properly represented.

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THE FINE PRINT – How does a contractor use construction liens to protect its interest?

In a previous column about construction liens, I explained them from the perspective of the homeowner. A construction lien is a very special kind of lien that is intended to protect contractors and suppliers who do not get paid by owners or other contractors. They don't require the filing of a lawsuit, and upon filing, they relate back to the last date of work, and take priority over any subsequent liens or mortgages.

A contractor can place a construction lien against the owner's

property simply by filing the proper documents with the Clerk of Court. The tricky part is making sure the proper notice (or notices) are given within what are very strict timeframes. Construction liens can only be filed within six months of the last date of work. And at least 30 days prior to filing a lien, the contractor must deliver, to the owner, a notice of intent to file a lien. This is a warning to the owner that a lien will be filed if the balance isn't paid. It effectively shortens the time to start action against the owner to no more than five months.

Also, within 10 days of starting work on a project, subcontractors on residential jobs are required to provide the owner with notice of the subcontractor's lien rights. This notice requirement also applies to general contractors who hire subcontractors. The easiest way to make sure this requirement is not missed is to include the required language in a written contract. The leverage a construction lien gives a contractor is that it ties up property, making it virtually impossible to sell or refinance, while the lien is in place. A construction lien can also be foreclosed, just like a mortgage. To do so requires filing an additional lawsuit, and it must be started within two years after the date the lien was filed. Filing a lawsuit is expensive, but it tends to get action. The goal isn't necessarily to get the property, but to put pressure on the owner to pay. Often the bank that holds the first mortgage on the owner's home will put pressure on the owner to pay.

A subcontractor or supplier can also file a lien even if the general contractor has been paid. This may seem unfair, but it's why owners should make sure they get lien waivers from subcontractors and suppliers when paying the general contractor. The fact that the owner needs to be this concerned about liens keeps the pressure on the general contractor to pay his subcontractors and suppliers. If the general contractor has been paid, but has not paid the subcontractors

and suppliers, it is likely in violation of the Theft by Contractor law. Such violations are punishable both civilly and criminally.

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THE FINE PRINT – How do I avoid being held hostage in my own company?

There are a multitude of risks associated with starting your own business, but losing control of your business to your partners doesn't have to be one of them. Luckily, unlike many business risks, you can avoid this trap with proper planning.

This article assumes that you operate as a limited liability company (LLC) or corporation. Ownership percentage is evidenced by shares of stock in a corporation, and membership interests, or units, in a limited liability company. For simplicity purposes, this article will use the term "shares"

to refer to both. The principles described apply similarly to LLCs and corporations.

While officers and directors run a company, it is the shareholders (owners) who elect the directors and officers. Therefore, it is those shareholders who ultimately control the company. The percentage of shares owned by each of the respective shareholders determines how much control each has.

Controlling shareholders can hire or fire employees and raise or lower their salaries. Because most shareholders of closely-held companies are also employees, this is a big deal. Even though shareholders also get a share of the profits, those profits could be significantly impacted or reduced by how the controlling shareholders decide to spend company money. They could give themselves big fat salaries, have the company spend lots of money on things that benefit them, fire or reduce the salaries of the other shareholder-employees, and leave little or no revenues left to be distributed as profits.

If this last bit sounds nightmarish, it should. If you end up being held hostage like this, you have little or no recourse. There's always litigation, but litigation is expensive and corporate law is on the side of the majority shareholders.

Control can be distributed via several different scenarios.

Majority Control By One Shareholder

If one shareholder owns 51% or more of the shares, he or she is the controlling shareholder. It's a dictatorship – which can be efficient and benevolent. But they're still dictatorships. If you are the 49% or less shareholder, you better feel 100% comfortable submitting total control to your business partner.

Majority Control By Two Or More Shareholders

The only difference here is that it takes more than one person

to establish a majority. It's slightly more democratic, but you won't feel any less oppressed if you're ganged up on.

Fifty-fifty Control By Shareholders

This is the most democratic, but also potentially the most destructive. All decisions require unanimous consent, but deadlock occurs if there isn't.

Be careful who you go into business with and how much power you give them over you. Ownership interest is usually determined by how much someone is contributing to the business. But no matter what they're contributing, it may not be worth the cost.

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THE FINE PRINT – How to get landlord to make repairs

In a previous column about resolving conflicts with one's landlord, I cautioned against withholding rent as a means to resolve a conflict with a landlord. Doing so usually leads to an eviction notice. I also advocated communicating in good faith to resolve problems, and for keeping accurate, written records of any such communication. Voicemails and text messages just don't cut it. Finally, but only as a last resort, I suggested that you should contact the Department of Neighborhood Services.

Apparently my column landed on the desk of someone in the Department of Neighborhood Services because I received some feedback and supplemental information from one of its inspectors. It turns out that the City of Milwaukee has a program that allows renters to have the city hold your rent money (escrow), if your landlord has uncorrected building violations. Before withholding any rent in anticipation of escrowing it with the city, make sure your situation is appropriate.

The City will allow you to escrow your rent if:

The owner is in noncompliance with an order issued by the Department of Neighborhood Services or the Health Department; and

A city inspector has authorized the initiation of rent withholding by providing the tenant with a signed and dated application; and

The tenant has not received an eviction notice and is current with their rent payments.

I cannot emphasize enough that you must be current on your rent. This is not a remedy that you can use when you're at the end of your financial rope or at wit's end. You need to allow time for the Department of Neighborhood Services to make an

inspection, to cite the owner for the violation, and for the violation to become past due.

The city may release money from the escrow account:

To the landlord if the violations have been corrected and certified by the Department of Neighborhood Services;

To the landlord to make the repairs necessary to correct the violations;

To the landlord upon presentation of approved and itemized receipts related to repairs necessary to correct the violations;

To the Department of Neighborhood Services so that it may hire a private contractor to make the repairs necessary to correct the violations

To the utilities company of the tenant if they are included in the rent;

To a receiver if one is appointed by the court;

To the tenant to pay for relocation costs if evicted for reasons unrelated to the violations and escrow of rent; and

To city for administrative fees related to the account.

The ability to withhold rent from one's landlord, through the use of the city of Milwaukee's escrow program, is a powerful tool. It provides a tenant with the leverage to force corrections of code violations without fear of retaliatory eviction. For more information, contact the Department of Neighborhood Services at (414) 286-3645.

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THE FINE PRINT – What should I know before I buy a condominium?

Condominiums can be appealing because of convenience. But before purchasing one, a potential buyer should consider that there are costs, both monetary and otherwise, to this type of ownership.

If simply seeking convenience, you could buy a traditional home and simply pay for a maintenance crew if you don't want to do the upkeep yourself. The cost of the maintenance would be less than monthly condominium fees and you would be free of the complications and disadvantages of condominium ownership.

Buying a condominium unit is like deciding to move to a foreign country. Most people would research the foreign country and its government before moving to it, but hardly anyone does so when they consider buying a condominium. However, the law requires that you receive a complete set of condominium documents when you make an offer to purchase a condominium unit. This is because these documents convey a lot

of important information. Review the documents carefully, and if you don’t understand them, review them with someone who does.

There will be several documents that relate to the nature and structure of the condominium “government.” The “declaration” document is like the Constitution; it lays out the basic legal framework for the government and it defines the transfer of control from the developer to a unit’s owner. As you might expect, the bylaws and rules determine how the condo owners govern themselves.

Realize that you will be subject to being governed by the condo board, a group of your neighbors, who will comprise the board of directors. Suffice it to say that there is often little or no screening to become a board member, so you can end up with a fairly dysfunctional governing body that has an inordinate influence over your life. Even worse is when the developer controls the board, either because the condominium is new, or because he or she has purchased the development after it has been foreclosed on. This means that instead of a mildly intrusive and potentially dysfunctional representative democracy, you could be living in a dictatorship.

Another important aspect of condominium ownership is the way a unit is valued. Factors that determine the value of a traditional home are its individual characteristics and quality, along with its location and neighborhood.

Valuation of a condominium unit is very different. It is determined almost entirely by its neighboring units, essentially representing average value of all the units in the complex. While often unfair, value is calculated this way because the units are almost exactly the same.

The condominium form of ownership may be appropriate for you, but there is extra work involved in becoming an educated consumer. Part of that education should include talking to

your potential neighbors about how they feel about being citizens in their particular condo community.

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THE FINE PRINT – Can I stop paying rent if I get in a dispute with my landlord?

When you sign a lease with a landlord, you're making an agreement. You give him or her money, and in exchange, you get a place to live. But it's more than that. You expect to have a place that you can live in comfortably and safely.

The law sets certain basic requirements. You have the right to "quiet enjoyment" and "tenantability." Generally speaking, these refer to the right to live in peace and quiet, without disturbance from others, in a place that is in good repair, and that has, at the very least, heat and water. Other less basic details, such as how much advance notice a landlord

needs to give before entering your residence, who pays for certain repairs and utilities, or whether animals are allowed, are covered in the lease.

If you ever have any questions about who is responsible for what, you should look to your lease first. Then, when you're armed with the facts, talk to your landlord. Prior preparation and good communication go a long way to solving many problems.

If your landlord refuses to take action for something he or she is responsible for, you should document the problem and your efforts to get it remedied. Too often, tenants rely only on the phone and fail to document their efforts to resolve their dispute. If the dispute ends up in court, which it easily can, you'll need evidence to back up your side of the story. Even if you use the phone, follow up with an email to the landlord to document that discussion. You might even find that the landlord responds differently when you place your demand in writing.

If the problem relates to your health and welfare (e.g. no heat or water), then it is probably regulated by municipal ordinances. If, after making a reasonable effort to communicate the issue to your landlord, you still don't get satisfaction, a call to Milwaukee's Department of Neighborhood Services is probably in order. It should go without saying that a call to DNS will not endear you to your landlord, so it should be one of your last resorts.

If you get to the point where you are considering withholding rent, it should only be in conjunction with terminating your lease, which puts you at risk for being sued. There is a legal basis for terminating a lease, especially when it comes to issues of health and welfare, but such a basis must be well documented and meet the elements spelled out in the law. A mere accusation that a landlord has breached the terms of a lease, on its own, is not a basis to withhold rent. If you do so, you should expect to get evicted and sued for back-rent.

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THE FINE PRINT – Avoiding the most expensive legal pitfalls in landlord-tenant law

Whether you are a landlord or a tenant, or know someone who is, you've heard some legal horror stories of residential rental-relationships gone bad. To that end, this column will be devoted to highlighting some of the most expensive missteps that landlords make. Tenants, on the other hand, will benefit from understanding where they have more protection and leverage.

The area that gets most landlords in trouble, especially inexperienced ones, is Chapter ATCP 134 of the Wisconsin Administrative Code. This section of law provides for landlords being assessed double damages and attorney's fees for a very specific list of violations. This means that violations are always expensive, and get more expensive very

quickly, if the landlord doesn't get out a checkbook out right away.

Security Deposits

One of the most common mistakes landlords make is not returning a tenant's security deposit within 21 days after the tenant moves out of a premises. If a landlord fails to do this, he or she is liable for twice the amount of the security deposit, plus the attorney's fees incurred by the tenant to recover the security deposit.

And when all or part of a security deposit is properly withheld, a detailed accounting of all amounts withheld must be delivered within this same 21-day time period.

A landlord is allowed to withhold amounts from a security deposit for tenant damage, waste, or neglect, for unpaid rent, utility, and other fees that are not included in rent, which the landlord becomes liable for. The landlord cannot, however, make deductions from the security deposit for normal wear and tear.

While the landlord may still be able to recover for properly withheld amounts, those amounts will be netted against the double damages and attorney's fees recovered by the tenant for failure to return the security deposit within 21 days.

A landlord must return the security deposit, and the accounting related to any withholding from the security deposit, to the tenant's last known address. This means that if the landlord does not have a forwarding address for the tenant, the deposit must be sent to the address of the recently surrendered premises, always using certified mailings, with a return receipt requested, for all mailings.

Prohibited Lease Provisions and Rental Practices

A landlord is liable for double damages and attorney's fees

for certain prohibited lease provisions and rental practices.

It is unlawful for landlords to include provisions in leases that purport to allow them to act in a way that is prohibited by law. Further, they cannot include a provision that requires the tenant to pay attorney's fees or costs incurred by the landlord in any legal dispute related to the agreement.

Finally, landlords are prohibited from practices such as the advertisement or rental of condemned premises, unauthorized entry of a tenant's premises, automatic lease renewal without notice, confiscation of a tenant's personal property, or retaliatory eviction.

The Wisconsin Department of Agriculture Trade and Consumer Protection has a handy fact sheet on tenant's rights and responsibilities that is available here: goo.gl/o4LNzr.

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THE FINE PRINT – Don't get

taken for ride by unscrupulous contractors

- The world is filled with honorable, hardworking, and talented contractors.

But that doesn't matter if you aren't lucky enough to find one.

And the bad ones are really bad, and they operate in a manner that ranges from incompetent to criminal.

If you aren't careful, you can lose tens of thousands of dollars before you know it. To make matters worse, you will likely not be able to recover your losses. The kind of contractor I'm talking about is usually "judgment-proof," meaning that even if you win a lawsuit against them, they have no assets to collect.

Your only real protection is to keep all contractors on a very short leash. The following recommendations are ways to help protect yourself.

Get Referrals

While past experience is no guarantee of future performance, using a contractor who comes highly recommended is a great way to avoid bad ones.

Require Certificates of Insurance

You don't want to get stuck with the liability for workplace injuries or damage. The only way to make sure you don't is to request certificates of insurance from the contractor. If a contractor can't produce these, get another contractor. Often licenses are dependent on having insurance so this probably means your contractor isn't licensed either.

Get It In Writing

Contracts do not have to be in writing, but make certain the one for your project is, and make sure it's signed. Wisconsin law requires that a contract must be in writing, if it stipulates prepayments. Memory tends to be selective, so a written contract provides all parties with a roadmap for settling their disputes before things get really nasty, and it can be used as evidence if they do.

Understand Construction Liens

Contractors understand construction liens. If you don't understand how they work, you're likely to have them used against you. I covered them in my August column: bayviewcompass.com/archives/14600.

Use Draw Requests

Use a system of draw requests (staged payments), especially if your project is large and/or your bank is involved. This requires the contractor to complete benchmarks before they are paid. A percentage will be held back to make sure there is an incentive for the contractor to finish every last detail. Also, lien waivers are provided by the contractor with every payment.

Purchase Materials Yourself

If you are concerned that the money you are paying the contractor for materials will not be used for that purpose, arrange to purchase those materials yourself.

Exercise Your Right of Rescission

If the contractor came to you, as in knocked on your door, Wisconsin law provides you with the right to cancel the contract within three days of signing. This law protects consumers from high-pressure sales tactics. If you have any misgivings, listen to your intuition and cancel the contract

by sending the contractor written notice.

Finally, be firm and confident. A professional contractor will be very familiar with the rules and conventions I have outlined above and will not object to following them. If they do, find another contractor.

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THE FINE PRINT – What should I be concerned about when hiring independent contractors?

By Jan Pierce

It used to be that independent contractors were people who were "between jobs." Now it seems that many more people either have been, or are independent contractors. A true independent contractor controls the time and manner of his or her work. In other words, payment is based on the work product, whereas a

traditional employee shows up at work at a specific time and gets paid to do specific work.

From an employer's point of view, it's great to avoid paying for employee benefits and expensive payroll accounting fees. But simply paying folks a flat hourly rate and handing them a 1099 form at the end of the year doesn't get around the legal obligation to do so. From the government's point of view, independent contractors are far less likely to report and pay income and payroll taxes. And because of the increase of the use of independent contractors, the underpayment of various taxes has become a huge problem for the government.

There are a number of moral and ethical problems with paying people as independent contractors who would otherwise be employees. But it's also against the law. And because it often results in the government being deprived of various streams of revenue, government is becoming much more vigilant about policing it. Various agencies in the state and federal government have developed tests to determine whether someone is a "statutory employee."

A statutory employee is someone for whom an employer is liable, by virtue of strict rules, for paying certain taxes, e.g. Social Security, Medicare, unemployment, worker's compensation. Often years go by before the employer is audited and discovers this liability. Even if just one person is involved, this can be a lot of money. If it relates to a number of employees, it can be disastrous for the employer. This is why major corporations often hire their independent contractors from an intermediate company that takes all the responsibility and liability for the hires.

To make matters more complicated, the criteria for determining whether someone is a statutory employee sets a very high bar, one that the employer will unlikely be able to meet. In addition, the employer must satisfy more than just a handful of criteria, like seven out of 10, which is almost impossible.

The simpler examples include being incorporated, having a separate office and equipment, and working for more than one employer. But the more elusive require services to be performed only under a contract on a commission or per-job or competitive-bid basis. Also, that the contractor takes losses, as well as profits, rather than just receiving a paycheck.

The independent contractor relationship can be beneficial for both the employer and contractor. But it's overused, and carries huge risks for the employer. It is an important decision that should be discussed with the employer's CPA or lawyer. If the employer has any doubt about its ability to hire someone as an independent contractor, it should err on the side of caution and hire that person as an employee.

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It used to be that independent contractors were people who were “between jobs.” Now it seems that many more people either have been, or are independent contractors. A true independent contractor controls the time and manner of his or her work. In other words, payment is based on the work product, whereas a traditional employee shows up at work at a specific time and gets paid to do specific work.

From an employer’s point of view, it’s great to avoid paying for employee benefits and expensive payroll accounting fees. But simply paying folks a flat hourly rate and handing them a 1099 form at the end of the year doesn’t get around the legal obligation to do so. From the government’s point of view, independent contractors are far less likely to report and pay income and payroll taxes. And because of the increase of the use of independent contractors, the underpayment of various taxes has become a huge problem for the government.

There are a number of moral and ethical problems with paying people as independent contractors who would otherwise be employees. But it’s also against the law. And because it often results in the government being deprived of various streams of revenue, government is becoming much more vigilant about policing it. Various agencies in the state and federal government have developed tests to determine whether someone is a “statutory employee.”

A statutory employee is someone for whom an employer is liable, by virtue of strict rules, for paying certain taxes, e.g. Social Security, Medicare, unemployment, worker’s compensation. Often years go by before the employer is audited

and discovers this liability. Even if just one person is involved, this can be a lot of money. If it relates to a number of employees, it can be disastrous for the employer. This is why major corporations often hire their independent contractors from an intermediate company that takes all the responsibility and liability for the hires.

To make matters more complicated, the criteria for determining whether someone is a statutory employee sets a very high bar, one that the employer will unlikely be able to meet. In addition, the employer must satisfy more than just a handful of criteria, like seven out of 10, which is almost impossible. The simpler examples include being incorporated, having a separate office and equipment, and working for more than one employer. But the more elusive require services to be performed only under a contract on a commission or per-job or competitive-bid basis. Also, that the contractor takes losses, as well as profits, rather than just receiving a paycheck.

The independent contractor relationship can be beneficial for both the employer and contractor. But it's overused, and carries huge risks for the employer. It is an important decision that should be discussed with the employer's CPA or lawyer. If the employer has any doubt about its ability to hire someone as an independent contractor, it should err on the side of caution and hire that person as an employee.

Send your question to jan@janpiercelaw.com. To protect your privacy, your name will not be published.

Jan Pierce, S.C. is a law firm In Milwaukee that was founded with the belief that people can make a positive difference in the world and make a profit. The firm's emphasis is on assisting small businesses and social entrepreneurs in all aspects of launching and managing their ventures. Disclaimer: Advice in this column is general legal information and does not constitute, nor is it intended to be, legal advice.