

State of California
FRANCHISE TAX BOARD
Sacramento, California 95867
(916) 369-4326

February 1, 1991

Bob Spidell
1110 N. Gilbert St
Anaheim, CA 92801

Dear Bob:

Re: Statutory Independent Contractors; Your letter of October 5, 1990

In your letter of October 5, 1990, you point out that in some cases the Employment Development Department will determine that a taxpayer is an employee under the California Unemployment Insurance Code for wage withholding requirements, while under the Internal Revenue Code and Internal Revenue Service rules, the taxpayer is an independent contractor for income tax reporting purposes, and should file a federal Schedule C.

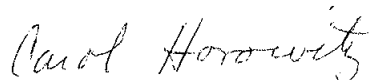
You ask how such an individual should report his or her income on the California Personal Income Tax return.

The taxpayer should report California income in accordance with the federal tax treatment, as the applicable provisions of California law incorporated federal code sections by reference.

Although there is an apparent inconsistency in characterizing a taxpayer as an employee for only withholding purposes, there is a reason for this inconsistency in that there is a distinguishable difference in what is being achieved through withholding provisions versus the income tax rules. The withholding provisions ensure that tax payments are made by taxpayers who may, historically, have presented a compliance problem to the state (in this case, unlicensed subcontractors). The income tax rules, on the other hand, are designed to reflect taxable income, and it is appropriate (unless, of course, the Legislature determines through the legislative process that it is inappropriate) to allow these taxpayers the same income tax treatment for determining taxable income afforded a trade or business, rather than that of a wage earner.

If I can be of further assistance in this matter, please telephone.

Sincerely,



Carol Horowitz
Bureau Director,
Legislative Services Bureau