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# Taxation Section

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## CHANGING THE RULES ON INDEPENDENT CONTRACTORS

*By John H. Draneas, Draneas & Huglin, P.C.*

In 2002, the Tax Section launched a legislative initiative to rework the Oregon statutory rules that defined independent contractors. Everyone on the Executive Committee believed that many Oregon businesses and tax professionals were unaware of the fact there were very substantial differences between federal and state law. When taxpayers structured business relationships under federal principles, they often unknowingly fell into non-compliance with Oregon law, incurring substantial penalties and expenses. And, in many instances, the application of Oregon principles prevented many federal independent contractors from ever qualifying as such under Oregon law, causing undesired outcomes for both employers and employees.

The Tax Section and the Oregon Bar caused the introduction of legislation that would bridge this gap by conforming Oregon law to federal law. We did not expect this to be controversial to any groups other than the Departments of Revenue and Employment. We were surprised when the bill was attacked by organized labor, the Governor's office, a number of state agencies, and even Associated Oregon Industries and some other business groups.

Expertly assisted by Bob Oleson and Susan Grabe from the Bar, we fought an intense legislative battle throughout the 2003 legislative session. Just when it seemed that the bill was going to pass through the last committee, the committee was disbanded. We managed to get the bill reintroduced through the Revenue Committee, which required that its effects be limited to income tax. Thanks to Herculean efforts by many legislators, our bill passed and was signed into law.

It changed the rules for income tax purposes, effective 2006, and directed the Governor to organize a task force to study further legislative changes, and to report to the 2005 legislature. That held everyone's feet to the fire and forced all parties to come to the table to work out a bill acceptable to the interested parties participating in the task force.

No good deed goes unpunished, and I became the Tax Section's representative on the Independent Contractor Task Force. Much of 2004 was spent in meetings and on phone conferences. As the task force members got to know each other, initial distrust converted into mutual respect, initial contention converted into cooperation, and we started to coalesce in a battle against a common enemy – time was running out to prevent the imposition of a law that none of us liked. Actually, it bothered the Tax Section less than it bothered others, but the Tax Section was happy to agree on a better law than what would have gone into effect otherwise.

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Right on schedule, the Task Force agreed unanimously on a revised version of ORS 670.600 and an explanatory report, and sent it to the 2005 Legislature for implementation. There were a few bumps in the road during 2005, but we managed to get it passed without major changes, and the final version has now gone into effect.

## The Logic of the Statute

If you strip the exceptions and fluff from the old and the new statutes, you can see that both have two basic requirements that must be met for a worker to be classified as an independent contractor.

The first is freedom from direction and control, which is essentially the same as the federal rule. Outcomes under federal law and this state requirement should be the same, although that is not necessarily assured.

In addition to being free from direction and control, and thereby satisfying the federal requirement, an Oregon independent contractor must also be shown to be engaged in an independently established business. To do that, at least four of six factors had to be met under the 1989 statute. These six factors had grown stale over the years, and no longer reflected current business realities.

The new statute substitutes a three out of five test for the independently established business requirement. Upon close inspection, the five factors can be recognized as being among the 20 factors applied by the IRS under federal law to determine direction and control. However, the Task Force deemed them to be immutable characteristics of a “real” business, and that most “real” businesses should be able to meet at least three of them. The following explanation of the new statute’s five factors is taken from the report of the Task Force:

- **Business Location.** A business usually has some business location of its own. However, it is not necessary that all of the services be performed from that business location; for example, a business may perform all services in the field and use its business location only for administrative functions. If the business location is located in the person’s residence, it must be in some portion (but not necessarily an entire room) of the residence that is used primarily (but not necessarily exclusively) for the business.
- **Risk of Loss.** A common characteristic of a business is a risk of loss. The proposed statute sets forth four factors that serve as examples of how risk of loss might be shown to exist. These four factors are not intended to be exclusive, and the failure to meet any or all of them will not necessarily be conclusive, depending on the facts

of a particular case. Risk of loss may be shown in other ways, as appropriate under the individual circumstances of each case.

- **Multiple Customers.** Businesses usually do not rely on one customer to generate all their revenue. This factor will be met if services are rendered for two or more customers within a 12-month period. In some cases, a business may not be able to find a second customer; or, the business performs under a contract that is so large that it cannot practically perform services for another customer during the term of that contract. Accordingly, this factor can also be met if the business makes appropriate efforts to obtain new customers, either for immediate or future business opportunities.
- **Investment.** Most businesses require some substantial investment to be made on the part of the owner. The proposed statute sets forth three factors that serve as examples of how a substantial investment might be shown to exist. These three factors are not intended to be exclusive, and the failure to meet any or all of them will not necessarily be conclusive, depending on the facts of a particular case. A substantial investment may be shown in other ways, as appropriate under the individual circumstances of each case.
- **Hire and Fire.** A common characteristic of a business is the ability of the owner to hire others to perform some or all of the services, or to provide assistance to the owner in doing so. A corollary of this characteristic is that the owner has the authority to terminate the services of those persons. It is not necessary that any other persons are hired or fired, only that the authority to do so exists.

## Why This is an Improvement

The Tax Section’s original goal of bringing Oregon law in line with federal law was simply not going to be possible. Numerous interest groups believed that federal law was “weak” and very easy for employers to manipulate. In addition, there was a strong and widely held belief that federal law, with its 20 factors, was too vague and esoteric to be capable of efficient enforcement. Many interested groups saw the Oregon statute as providing a “bright line” test that made it “easy” to distinguish employment relationships from contractor relationships, and did not want to give that up.

While Tax Section members are accustomed to analyzing situations under federal law and, if the federal requirements are met, then applying the “extra” Oregon requirement of an independently established business, the Oregon administrative agencies seem to have approached the analysis in reverse order. They seem to have used the conceptually simple independently established business requirement as a primary filter and, only if that requirement was met, then made the more esoteric inquiry into direction and control.

Since that approach was not going to change, the effort took the approach of redesigning the independently established business requirement so that, in the greatest possible number of cases, a situation that met the direction and control requirement could also meet the independently established business requirement.

The primary difficulties with the old independently established business requirement were that it focused too heavily on construction trade situations and bricks-and-mortar type businesses. Tools, yellow page advertising, and labor forces were given very heavy emphasis. But times had changed, and individuals working on their own, from business premises located in their homes, and with communications centered on cell phones had become quite common. Traditional concepts of lifetime employment by a single employer had become largely historical concepts. Independent businesses in the modern age bore little resemblance to past versions, yet the old rules refused to recognize independence in many deserving situations.

The new independently established business requirement is a product of compromise, but compare the old and new factors as contrasted in the following table: (See **Table 1 on page 5**)

In broad terms, the consensus of the Task Force was that a “real” business must function from a place, involves risk, has to find business opportunities, requires capital, and exerts some level of control over who actually performs the work. Reviewing the five factors one by one will give greater clarity to the effect of the changes. Note that the comments are based upon the Task Force’s report and deliberations, and may be affected by subsequent rule-making and litigation.

**Business Location.** This factor can be met by having either a business location separate from the recipient of the services, or maintaining a dedicated location in one’s home. The separate premises requirement can be met if the contractor leases space from the recipient of the services, even if only a portion of the recipient’s business premises. With regard to the home, it is not intended that this bear any resemblance to the federal require-

ments for a home office deduction. Any portion of the home, such as a desk in the corner of a bedroom, that is used primarily for business purposes, such as maintaining business records, will satisfy the requirement.

**Risk of Loss.** The specific examples are non-exclusive. Any other form of a risk of loss can meet this factor. It is not necessary that there be any likelihood that a net loss for a taxable year could be incurred; only that there can be a loss on a specific portion of an individual project. Commission-based compensation was intentionally left off the example list. This was not because such arrangements could not meet the risk of loss requirement, but out of a concern that they not be deemed to automatically constitute a risk of loss.

**Multiple Customers.** Multiple customers were seen as a hallmark of a “real” business, but construction subcontractors who worked on a single, multi-year project shouldn’t become employees because they didn’t have time available for a second customer. Also, a business that tried to, but could not, find a second customer is not necessarily less of a business. The compromise was to allow this requirement to be satisfied by efforts. Note that efforts to secure a customer for a future year should be sufficient.

**Investment.** The examples should demonstrate that relatively inexpensive levels of investment could be significant enough to meet this requirement.

**Hire and Fire.** This factor is met based upon theoretical authority. There is no need that employees actually be hired. As a practical matter, this factor will be met in the majority of circumstances, as there is usually no contractual restriction against hiring helpers at one’s own expense.

## Examples

The operation of the statute can best be understood by considering a few examples, all of which would have encountered difficulty in qualifying as independent contractor relationships under old law. Note that freedom from direction and control is assumed to exist in all of the examples, which may not always be the case.

**Example 1: Locum Tenens Physician.** Retired physician works sporadically for insurance company to fill in for deceased or disabled physicians. Treats patients of deceased/disabled physician at his/her office, based on pre-existing and after-developed appointment schedule. Paid on a per diem basis, and all fees collected go to insurance company and/or deceased/disabled physician. Absolutely no control exercised over treatments, methods, etc.

**Example 2: Teenage Web Site Engineer.** Hired by business to develop a web site from home during summer vacation, based on referral from father who wants the kid to make some money. Self-taught whiz kid. Paid \$5,000 for entire project. Goes to school the rest of the year. Doesn't need to work any more because bank account is full and already owns a car.

**Example 3: Computer Consultants.** Company contracts to provide computer services to other businesses, then subcontracts work to consultants. Consultants paid by the hour, on a periodic basis. Company charges by the hour, but at a higher hourly rate. Company knows little about the work being done. Subcontractors have general control over the hours they work, but do have to be available for client consultation/meetings.

**Example 4: Window Washer Referral Agency.** Agency advertises for customers, and subcontracts work to window washers. Washers sent out to bid job on behalf of referral agency, who bills customer in its own name. Washer paid a percentage of what customer pays, nothing if not collectible. Some washers have independent window washing business and use this to fill in work (Group 1). Some rely on agency for all business (Group 2). No additional compensation paid for job re-dos.

**Example 5: Cruise Ship Dance Instructors.** Cruise line hires two dance instructors to provide instruction to passengers during cruises, one for ballroom dance and one for popular dance. Each instructor is paid a set fee per cruise. Cruise line charges passengers for lessons, or gives them away. Instructor 1 is retired from dance instruction business, and does no other work. Instructor 2 is younger, and still provides dance lessons to students at own dance studio.

**Example 6: Travel Agent.** Travel agency retains agent to provide travel agent services to public. Agency refers customers to agent, but agent can find own customers as well. Agent spends \$15,000 per year on newspaper, magazine and interest group advertising in own name, and \$12,000 per year printing and disseminating monthly brochure to customer list. All tickets issued in agency's name, billed by agency, and payment collected by agency. Agent is paid a commission based on ticket sales. Agent sets own hours, and either pays rent for office space or works from home.

**Example 7: Expert Witness.** Law firm hires college economics professor to provide expert testimony on damages in personal injury lawsuit because former student who is now an associate was impressed with professor's skills. Paid a set fee of \$25,000. Has never testified as expert before, and does not do so for anyone else that year - too busy with this case to try to find

another one. Contract requires that expert perform all research work, for purposes of admissibility.

(See Table 2 on page 5)

## Use of Entities

The statute includes two provisions that apply to the use of business entities. One is a simple clarification, which makes it clear that, if services are provided through a business entity, the Independently Established Business requirement can be met by consideration of the attributes of both the entity and the individual.

The other is intended to address a potential for abuse. It makes clear that the use of an entity will not, by itself, establish an independent contractor relationship. The State agencies pointed out to the Task Force that many people assumed that if they incorporated themselves, they would have to be treated as independent contractors, on the theory that only an individual could be an employee. According to the agencies, such situations are routinely treated as employment relationships upon audit, apparently by piercing the corporate veil.

## Exclusions

Some on the Task Force wanted to create a single definition for all purposes under Oregon law, in order to provide greater certainty and simplicity for employers. As the Task Force went deeper into its analysis, it became apparent that such a seemingly logical objective was going to be very difficult to accomplish because of varying policy goals.

Consequently, it should be noted that the new statute does not apply for purposes of wage and hour and worker compensation purposes. The Wage and Hour Division believed that it was required to follow federal rules about minimum wage, coverage, etc., and that the revisions to ORS 670.600 would be contrary to those requirements. Similarly, ORS 670.600 had little practical application to Oregon worker compensation rules. The Task Force believed that the policy issues involved in modifying worker compensation coverage were well beyond the scope of its mission, and elected to make no change in that regard. That is, the ORS 670.600 definition was modified, but the more pertinent "subject worker" definition of Oregon worker compensation law was not conformed.

## Conclusions and Predictions

On balance, the Tax Section was very successful in accomplishing its objectives. We were not able to eliminate the Independently Established Business requirement and completely conform Oregon law to federal tax law. However, we were successful in revising the definition of an independently established business so that independent contractor status will be established in the

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**Table 1**

<b>OLD STATUTE</b>	<b>NEW STATUTE</b>
<i><b>Independently Established Business</b></i>	<i><b>Independently Established Business</b></i>
<p>(8) The individual or business entity represents to the public that the labor or services are to be provided by an independently established business. Except when an individual or business entity files a Schedule F as part of the personal income tax returns and the individual or business entity performs farm labor or services that are reportable on Schedule C, an individual or business entity is considered to be engaged in an independently established business when four or more of the following circumstances exist:</p> <p>(a) The labor or services are primarily carried out at a location that is separate from the residence of an individual who performs the labor or services, or are primarily carried out in a specific portion of the residence, which portion is set aside as the location of the business;</p> <p>(b) Commercial advertising or business cards as is customary in operating similar businesses are purchased for the business, or the individual or business entity has a trade association membership;</p> <p>(c) Telephone listing and service are used for the business that is separate from the personal residence listing and service used by an individual who performs the labor or services;</p> <p>(d) Labor or services are performed only pursuant to written contracts;</p> <p>(e) Labor or services are performed for two or more different persons within a period of one year; or</p> <p>(f) The individual or business entity assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission insurance or liability insurance relating to the labor or services to be provided.</p>	<p>(3) For purposes of subsection (2)(b) of this section, a person is considered to be customarily engaged in an independently established business if any three of the following requirements are met:</p> <p>(a) The person maintains a business location:</p> <p>(A) That is separate from the business or work location of the person for whom the services are provided; or</p> <p>(B) That is in a portion of the person's residence and that portion is used primarily for the business.</p> <p>(b) The person bears the risk of loss related to the business or the provision of services as shown by factors such as:</p> <p>(A) The person enters into fixed-price contracts;</p> <p>(B) The person is required to correct defective work;</p> <p>(C) The person warrants the services provided; or</p> <p>(D) The person negotiates indemnification agreements or purchases liability insurance, performance bonds or errors and omissions insurance.</p> <p>(c) The person provides contracted services for two or more different persons within a 12-month period, or the person routinely engages in business advertising, solicitation or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.</p> <p>(d) The person makes a significant investment in the business, through means such as:</p> <p>(A) Purchasing tools or equipment necessary to provide the services;</p> <p>(B) Paying for the premises or facilities where the services are provided; or</p> <p>(C) Paying for licenses, certificates or specialized training required to provide the services.</p> <p>(e) The person has the authority to hire other persons to provide or to assist in providing the services and has the authority to fire those persons.</p>

**Table 2**

<b>RESULTS IN EXAMPLES</b>												
<b>EXAMPLE</b>	<b>OLD LAW</b>						<b>NEW LAW</b>					
	<b>a</b>	<b>b</b>	<b>c</b>	<b>d</b>	<b>e</b>	<b>f</b>	<b>a</b>	<b>b</b>	<b>c</b>	<b>d</b>	<b>e</b>	
Locum Tenens Physician	X			X		X	X	X	?	X	?	
Teenage Web Site Engineer				X		X	X	X	?	X	X	
Computer Consultants	X	X	?	X	?	?	?	?	?	X	?	
Window Washers												
Group 1	X	X	X		X	X	X	X	?	X	X	
Group 2	X	?	?		?	X	X	X	?	X	X	
Cruise Ship Dance Instructors												
Instructor 1	X			X		?	X	X	?	X	X	
Instructor 2	X	X	X	X	X	X	X	X	X	X	X	
Travel Agent	X	?		X	?	X	X	X	X	X	X	
Expert Witness	X			X		X	X	X	?	X		

# TAXATION SECTION LISTSERV

As many of you know, the OSB Tax Section recently started its own Electronic Mail Distribution List (listserv). The following is a reprint of the welcome message sent to all Tax Section members who have e-mail addresses registered with the bar:

Welcome to the Electronic Mail Distribution List (listserv) that has been set up for members of the Oregon State Bar Taxation Section. It is recommended that you save this message for future reference.

A listserv is essentially an electronic bulk e-mail to all section members. The listserv offers members the capability of communicating instantly with a large group and having a way to contribute to discussions. If you post to the listserv, you are in effect sending that posting to everyone. The e-mails you receive from the listserv will also be received by all members.

Participation is open to all section members who have e-mail addresses registered with the bar. Members are automatically signed up on the listserv, however your participation is not mandatory. If you want to remove yourself, simply unsubscribe.

## How to Use This List Serve

- To send a list serve message to all members of the Taxation Section, enter \_\_\_\_\_@lists.osbar.org <mailto:\_\_\_\_\_@lists.osbar.org> in the To: line of your e-mail.
- Listserv e-mails will be identified by [OSBTAX] at the beginning of the subject line. Replies are directed (by default) to the SENDER of the message ONLY. If you wish to send a reply to the entire list, you can press "Reply to All". (As a general rule, you should use "Reply to All" if you believe the content of your reply is of general interest to all members of the section.)

## HOW to Make Changes to Your Subscription

Send a plain text e-mail message to listserv@lists.osbar.org <mailto:listserv@lists.osbar.org > with the following in the body of your message for each type of change:

- To remove yourself from the list: unsubscribe \_\_\_\_\_<your name>
- To receive your message in digest form (combined into a single message sent once each day): set \_\_\_\_\_ digest<your name>.

- To discontinue digest format: mail \_\_\_\_\_<your name>
- This is a closed list - to change your e-mail address or to resubscribe to a list after you have unsubscribed: Send an e-mail with the new information to Sarah Hackbart, shackbart@osbar.org <mailto:shackbart@osbar.org>

## Guidelines and Considerations

1. Include a subject line in messages to the list, for example, "lawyer referral needed" on the topic line. When replying to a message from the digest version of the list, edit the subject line to indicate the topic of reply.

2. Sign your messages with your full name, firm name, and appropriate contact information. E-mail addresses alone do not provide the necessary identification. Find and use the "auto signature" feature, available with many e-mail programs.

3. Do not send attachments. In the interest of virus prevention, graphics and attachments are not accepted by any section list serve and messages with any attachments will be returned to the sender. Plain text messages with no attachments are the best format to use for list serve e-mails. Consider copying text from an attachment directly to the body of your list serve e-mail message.

4. If you have posted a message, and someone replies only to you, please obtain the permission of the sender before forwarding the reply to the entire listserv. Additionally, you should obtain permission from the original sender before forwarding a message from this list to someone who does not subscribe to this list.

5. Avoid using the list to express personal views. The list serve is not to be used for discussing local, state or federal elections, political issues, or endorsements. Job announcements or solicitations for services are not appropriate messages.

6. If you use an autoresponder when you are away from your office, note that your autoresponse will be sent to the sender of the message only, and not to the entire list. Please change your subscription to the digest format while you are away from your office for an extended period of time, or unsubscribe for that time period. See above about changing your subscription. Additionally, please unsubscribe from the listserv if you use anti-spam software that bounces e-mails back to the senders to ask them to confirm their e-mails. (Anti-spam software is available that uses other methods to block spam.)

7. Electronic communications are making their way into the courtroom. Keep in mind the following: List Serves messages and e-mails are not casual conversation. Pressing delete does not mean that the data has been deleted.

8. For reasons of confidentiality, do not post any detailed information about your client's situation. You should assume that your post will be read by persons with adverse interests and that the identity of your client may be discerned from any detailed recitation of facts. It is your responsibility to ensure that you do not violate the Oregon Rules of Professional Conduct through your use of this listserv.

9. Do not use this listserv as a substitute for doing your own research. Post your question only after your research has failed to find an answer.

10. Do not use this listserv as a substitute for competency. If a client presents a problem outside of your area of expertise, refer the client to someone else who is familiar with that area of the law.

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## 2006 TAX PRIMER

*By David C. Streicher, Black Helterline LLP*

It's now a new year, and with it comes a new set of laws, rules and rates. As of January 1, 2006, the following apply:

**Federal Income Taxes.** The maximum rate on individuals is now 35%, which applies to taxable income in excess of \$336,550 (assuming a joint return). The lowest individual bracket (assuming a joint return) is 10%, which jumps to 15% (for income over \$15,100), 25% (for income over \$61,300), 28% (for income over \$123,700), and 33% (for income between \$188,450 and \$336,550). Trusts and estates have the same maximum rate, but it phases in once taxable income reaches \$10,050. The 2006 standard deduction will be \$5,150 for single individuals and \$10,300 for a married couple, and the personal exemption will be \$3,300 per person. As in prior years, the maximum rate on dividends and long-term capital gains will be 15%. The 2006 AMT exemption will be \$33,750 for single taxpayers and \$45,000 for a married couple. This reflects a reduction from 2005, when the exemptions were \$40,250 and \$58,000, respectively. More taxpayers will be affected by the AMT, many of who have never had the privilege in years past. Consequently, a number of typical year end tax planning methods will be unproductive for those affected by AMT, thus beware. The 2006 rate on corporations starts at 15%, then jumps to 25% (for income over \$50,000), 34% (for income over \$75,000), 39%

(for income over \$100,000), and back down to 34% (for income over \$335,000). The corporate rate on taxable income over \$335,000 ranges from 35% to 38%.

**Federal Transfer Taxes.** The 2006 federal gift tax annual exclusion will be \$12,000 per donee, an increase of \$1,000 over 2005. For deaths occurring in 2006, the estate tax applicable exclusion amount and the GST exemption amount both increase to \$2 million, up \$500,000 from 2005. However, the lifetime gift tax exclusion remains at \$1 million. The 2006 federal estate tax rate is a flat 46% on the excess of the taxable estate over \$2 million. As of February, 2006, the section 7520 rate is 5.2%.

**Oregon Inheritance Tax.** The threshold for filing a 2006 Oregon inheritance tax return is a gross estate of \$1 million or more. Oregon inheritance taxes are payable only on the excess of the taxable estate over \$1 million. For the portion of a taxable estate between \$1 million and \$1,093,785, the 2006 rate is 41%. Thus, if the taxable estate is exactly \$1,093,785, the Oregon inheritance tax will be \$38,452. Once the taxable estate exceeds \$1,093,785, the marginal rate drops to 5.6%. Thus, for example, if the taxable estate is \$1,100,000, the Oregon inheritance tax will be \$38,800, being the sum of \$38,452 (i.e., 41% of the \$93,785 excess over \$1 million) and \$348 (i.e., 5.6% of the \$6,215 excess over \$1,093,785). The marginal rate gradually increases

from 5.6% to a maximum of 16%. For example, if the taxable estate is \$3.1 million, the marginal rate is 9.6%.

**Washington Estate Tax.** Unlike Oregon, Washington has a \$2 million exemption for decedents dying in 2006. The marginal Washington rate for the portion of the taxable estate over \$2 million is 15%. Thus, for example, if a Washington taxable estate is \$2.5 million, the Washington estate tax would be \$75,000 (i.e., 15% of \$500,000). One thought a retiring Oregon resident taxpayer should consider is a move north to Washington. Why? No state income tax, lower state death tax rates, larger estate exemptions, and a community property step-up in basis at death.

**State and Local Income Taxes.** Oregon personal and corporate income tax rates have not changed since 2005. The maximum rate for individuals is 9%, which applies to taxable income in excess of \$5,000. The taxable income of corporations is taxed at a flat rate of 6.6%, with the minimum tax being \$10. For 2006 and subsequent years, there is no Multnomah County income tax.

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### ***Changing The Rules On Independent Contractors***

overwhelming number of situations where the federal requirements are met. That should be pretty obvious to anyone who takes the time to run a few examples through the new statutory framework.

But this is no time for complacency. The State agencies are embarking on a new rule-making effort, and it will be important to stay current on developments, and to provide comment whenever appropriate to ensure that the philosophy of the new statute does not change.

Early indications are that the agencies are now better aware of the importance of direction and control, and there is a contingent that believes that the State should adopt new rules to address how freedom from direction and control should be established. That approach seems very inconsistent with the stated objective of simplification, because there already exists a very extensive and thoroughly developed set of rules under federal law. Since Oregon employers must all conform with the federal rules, it would seem that the best course for the State to take, in the interest of simplicity, would be to simply follow those rules, and not create an entirely new body of law requiring separate compliance by employers. At a minimum, the Tax Section membership and leadership should continue to provide assistance to the agencies in this regard.

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