**SS-8 Forms**
Lawson mentioned another method for determining worker status. Either party can apply to the IRS for a determination by using IRS Form SS-8. The IRS will consider the information provided on the form, and will also contact the nonfiling party for its version of the facts relevant to the application. Each side gets a say.

Unlike so many submissions to the IRS these days, there is no fee for the determination, and it isn’t generally too detailed (regardless of whether worker or employer submits it). Response time varies, and answers can take months.

An important consideration for filing this form is that an adverse determination is not appealable. Still, the filer can ask for reconsideration if new information arises, or can withdraw the application at any time prior to the IRS signing the determination letter. The determination is only binding on the IRS, so its relevance is limited to actions initiated by the IRS. Moreover, the IRS can only rule on the facts and information before it, so it’s worth trying to ensure that relevant facts are submitted. Don’t treat SS-8 submissions as trivial. They are not.

**Big Field**
It is not possible to cover every nook and cranny of independent contractor versus employee controversies in a short 90 minutes. Even focusing strictly on the federal tax side would be a tall order. When you add in state tax laws, unemployment law, worker’s compensation, federal and state employment law, tort law and all of the many other messy contexts in which this now fundamental (and growing) area arises, it’s truly a many-headed hydra.

Still, this seminar is a great introduction to the world of independent contractor reporting, and the advantages and disadvantages of contractor versus employee status. An audio recording is also available for purchase through Lorman’s Web site, and a purchase of that audio includes all course materials.

For more information about this telecast or other seminars, programs, courses and books from Lorman, visit www.lorman.com or call (866) 352-9539.

---

**Deducting Transaction Costs**
By Robert W. Wood • Wood & Porter • San Francisco

Here’s a subject that is near and dear to M&A TAX REPORT readers’ hearts. When it comes to transaction costs, you want to deduct as much as possible. Of course, INDOPCO stands as a barrier, but it may be possible to particularize fees, to bifurcate and trifurcate the fees. Some may be deductible, and in general, the more specific your vendors or service providers are about exactly what they did and to what end, the better.

Yet, even if you are resigned to capitalizing fees, it can matter into which entity you put them. Thus, you should consider to which company transactions costs should be attributed. It can make a difference, as shown by LTR 200830009 (Apr. 11, 2008).

**Who Paid?**
There, a surviving company (“Survivor”) was acquired in a merger, and sought to allocate merger transaction costs between itself and the target company (“Target”), which merged into it. The facts are worth reviewing but are too involved to lay out here. Notably, however, most of the actual contracts and costs came at the parent level (“Parent”), Parent of what became Survivor.

Parent arranged for a number of transaction costs, including fees for financial advice, legal services, due diligence services, etc. The question the IRS addressed was exactly who could claim credit for these fees.

The ruling begins with a recitation of the deduction versus capitalization rules. The regulations under Code Sec. 263 carve out “covered transactions,” making it clear that transaction fees to pursue covered transactions must be capitalized.

However, the question here was how those fees should be allocated. The IRS ruled that Survivor could allocate the transaction costs to Target or the acquisition company (which merged into Survivor) based on the entity to which the services were rendered and/or the entity on whose behalf they were provided.
That can allow some flexibility. Indeed, the ruling notes that these were lump-sum costs from the various vendors, and that detailed billing records were not available. Still, the IRS found the records sufficient to support an appropriate allocation between the entities.

**Conclusion**

You may be used to the old saw that one taxpayer cannot deduct costs paid on behalf of another. Yet here, we’re only talking about an allocation of transaction costs, with appropriate sharing based on which entity received the services. The silver lining of LTR 200830009 is simply that transaction costs can be allocated among entities. This in itself provides some flexibility, even though it is obvious that a current deduction is the real bonanza.

On that point, there were some costs here that the IRS said *could* be deducted (for example, some investigatory expenses). Similarly, there were some financing costs related to a securitization financing plan that the IRS ruled were eligible for an abandonment loss under Code Sec. 165. Notably, a particular financing plan was abandoned, and its abandonment (along with the sunk costs to pursue it) therefore allowed that abandonment loss deduction.

There may be no good substitute for the deduct-or-bust mantra that was so often in evidence prior to *INDOPCO*. Even in the current climate, in which you may be lulled into thinking that everything must be capitalized, it’s worth particularizing legal and accounting fees, banking costs, *etc*. You may be surprised at the results of such efforts.