



Robert W. Wood

THE TAX LAWYER

TAXES 6/12/2015

Beware Tax Cops At Farmers' Markets

“Do you want an invoice so you can deduct that?” the fruit seller asked. The buyer grabbed her sack of peaches and handed over the cash in a practiced movement, shaking her head no. “That’s the first thing you learn in business,” continued the farmer, sagely advising the woman. The local farmers’ market is atwitter with such interactions.

Bartering. Income is income, whether you get it in cash or in kind. Whether one-on-one or with multiple parties, the IRS says trading one product or service for another is taxable bartering. Apples for corn? The IRS taxes it. You name the swap, it’s income to both sides just like cash.

Both are *supposed* to report the fair market value of goods or services on their tax returns. Any time [you barter, the IRS wants is cut](#). It isn’t clear how much bartering goes on or is reported, but that could change with the IRS’s [Bartering Tax Center](#). A [video interview](#) explains what forms to file.

My guess? Most bartering probably skips the IRS, a kind of farmers' market don't ask, don't tell.

Form 1099 Reporting. How will the IRS know about trades or how much cash changes hands? They probably won't unless you receive a [Form 1099](#). According to this [IRS tax tip](#), you should ask the other party for one. Of course, the IRS says you must report any income on your return regardless of whether you receive a Form 1099. If the barter exchange occurs in employment, there's employment tax on top of income tax. If you're the employer, that can mean a penalty for failure to withhold. What's more, [failing to pay employment taxes means personal liability](#).

Cash Reporting. At the farmers' market, cash transactions are the norm. Of course, cash is income. However, cash tax forms are rarely required. You must file [IRS Form 8300](#), if your business receives over \$10,000 in cash from one buyer in a single transaction or several related transactions. This is the form that got [Dennis Hastert](#). \$10,000 buys a lot of produce, so you're unlikely to see one.

Independent Contractors. Whether to hire employees or independent contractors may *seem* like a no-brainer. With independent contractors, you don't have to withhold taxes or pay benefits, and they are easier to fire. But if your "independent contractors" are reclassified, the IRS can assess crippling retroactive penalties.

Classically, employees go to work at set hours while independent contractors set their own. Employees follow orders, while independent contractors don't. Employees receive regular paychecks while independent contractors are paid by the job. Employees work year-round, while independent contractors are temporary.

Employers control employee actions, while independent contractors work on their own. Of course, in real life lines blur and classifications are second-guessed. But many workers who work at the farmers' market are probably treated as independent contractors, not employees.

Hobby Losses. A few farmers probably have this issue even though they may think their prize tomatoes are pure business. In this area of intense IRS scrutiny, the IRS [issued a new manual](#) to help IRS agents ferret out taxpayers who improperly write off hobbies. The IRS is less likely to question whether you're engaged in a *business* where your income exceeds your expenses.

[If you want the ABCs of hobby losses](#), it helps to keep good records and hold yourself out as running a business. If you eke out a profit three years out of five (or two years out of seven if your activity is horse breeding), the IRS will *presume* you're in business to make a profit. That presumption is worth a lot so you won't have to mud wrestle with the IRS over a fuzzy facts and circumstances test.

There is plenty of good produce at the farmers' market. Despite the potential taxes—and however you pay for your produce—get to your local farmers' market and enjoy it.

*For alerts to future tax articles, follow me at Forbes.com. Email me at Wood@WoodLLP.com.
This discussion is not intended as legal advice, and cannot be relied upon for any purpose without
the services of a qualified professional.*