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Dear _____
Name

Thank you for selecting E&M Tax Services, Inc. to assist you in preparing your tax returns for this upcoming tax season. This letter confirms the terms of our engagement and the nature, timing, and limitations of the services we will provide.

The preparation fee for the 1099 forms is **\$265** for 10. After 10, there will be a \$265 charge per hour to complete the remainder. Payment is due once we provide you with your forms. We will not electronically file or submit forms until payment is received. We will prepare your 2024 1099s from the information you have provided.

As many of you already know in 2019, the Governor signed AB 5. Under AB 5, most workers are presumed to be employees for both labor and payroll tax purposes unless the business (hiring entity) satisfies a three-factor test, referred to as the ABC test. This means that many workers previously classified as independent contractors are now employees under California law and you must withhold California income and payroll taxes and meet California's minimum wage and overtime requirements.

Because of this, E&M Tax Services, Inc. will be handling 1099s differently this year. In order for us to handle the preparation and filing for your company's 1099s, you must certify you have followed the rules in paying out your workers. We can provide you with information about the ABC Test and exemptions of the ABC Test but will not be advising you on the classification of workers.

What is the ABC Test

Under the ABC test, **all three of these conditions must be met** in order to treat the worker as an independent contractor:

- A. The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, commonly known as the ***Borello*** "control test" (*S.G. Borello & Sons, Inc. v. Dept. of Ind. Rel.* (1989) 48 Cal.3rd 342)
- B. The worker performs work that is outside the usual course of the hiring entity's business and
- C. The worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed.

Some Exemptions Are

Applying the ABC test to workers will result in many more workers being classified as employees, the legislation provides for numerous exemptions to the application of the ABC test. The exemptions are complicated, and very specific. However, the exemptions do not mean workers are automatically independent contractors. We will provide a separate PDF of common exemptions.

What happens if you do not follow the rules?? PENALTIES

Be aware that California law includes severe financial penalties for willfully treating an employee as an independent contractor.



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The penalties, which are in addition to other assessments, penalties, or fines are:

- \$5,000 to \$15,000 for each violation (a single misclassified individual) and
- \$10,000 to \$25,000 for each violation if the Labor Commissioner, or a court, determines there is a “pattern and practice” of these violations.
- (Labor Code § 226.8)

With the exception of an attorney or other employee of the business, these penalties also apply to your tax professional or any paid person who advises you to incorrectly treat a worker as an independent contractor. This means that you may be required to obtain a legal opinion if there is a question as to the classification of employees and as a non-attorney, I cannot provide this advice.

Important points

There are two important points to understand:

1. Forming or operating as a corporation or an LLC is not a work-around. The corporation or LLC will be ignored if the worker does not meet the ABC test, and the worker who owns the entity will still be an employee of the payor.
2. The effective date of the law is January 1, 2020, but could be applied retroactively, so time is of the essence. The law is extremely complex with many unanswered questions. We continue to research and educate ourselves and are available to consult with you regarding this new issue as well as any other tax-related matters.

I understand the rules and legislation regarding hiring independent contractors and am confirming that the 1099’s that I am requesting to be prepared by E&M Tax Services, Inc. are based on my classification of each contractor as the hiring entity. My determination regarding these said contractors was not based upon advice from E&M Tax Services, Inc., but solely my understanding of the AB5 Law and my determination of their employment status.

If the above fairly sets forth your understanding, please sign the enclosed copy of this letter and return it to our office. Work cannot commence until a signed copy of this document is returned.

Yours truly,
E&M Tax Services, Inc.

Acknowledged by:

Name of Company/Individual issuing 1099s

Representing Officer/Responsible Individual

Date