



Market Segment Specialization Program



ENTERTAINMENT

Music Industry

The taxpayer names and addresses shown in this publication are hypothetical. They were chosen at random from a list of names of American colleges and universities as shown in Webster's Dictionary or from a list of names of counties in the United States as listed in the United States Government Printing Office Style Manual.

This material was designed specifically for training purposes only. Under no circumstances should the contents be used or cited as authority for setting or sustaining a technical position.



Department of the Treasury
Internal Revenue Service

Training 3153-101 (3/94)
TPDS 83411J

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INTRODUCTION

This music industry handbook will give the user an overview of the music industry. It generally will show:

1. How the industry is structured.
2. What is involved in making and marketing a record, tape, or compact disk.
3. How income is generated by artists and their operations.
4. Books and records that should be available in each industry segment.
5. Common industry terminology.
6. Accounting practices used in the industry versus proper tax treatment of various issues.
7. Suggested audit techniques regarding specific issues or accounts.

This handbook is a general overview of the industry; it is not all-inclusive. Examiners should exercise their own initiative, consistent with applicable statutes, regulations, administrative pronouncements, and case law. No interpretation of the law discussed in this handbook is to be cited as authority to taxpayers or used in the disposition of any case. Interpretation of the law should be made by the individual examiner working the case.

Guidelines reflected in this handbook do not alter any existing technical or procedural instructions contained in the Internal Revenue Manual (IRM). If there are inconsistencies between these guidelines and the IRM, the IRM should be followed.

This handbook contains information on the following segments of the music industry:

- Songwriters
- Publishers
- Performers
- Record producers
- Managers
- Videos

This audit techniques handbook was written using knowledge and audit results obtained from audits performed in the various segments of the music industry. Throughout the handbook reference may be made to audits or examination results.

Following is a list of issues not necessarily unique to the music industry but probably would not be found in other industries.

1. Depreciation on capital improvements to personal residence to maintain the "image" of a big star.
2. Expense to maintain a get-away or vacation home where songwriters would write or receive their inspiration.
3. Stage clothes expenses that were not different than ordinary street clothes.
4. A retired songwriter treated royalties as wages rather than income subject to self employment tax because the songwriter believed he or she no longer active in the music industry.

Numerous other issues raised were not unique to the music industry.

A few audits did generate employment tax audits where band members were not treated as employees. See the section on Employment Tax for more information on employment status and employment tax relief.

MUSIC BUSINESS

GENERAL INFORMATION

The music business attracts various taxpayers such as songwriters, producers, entertainers, executives, artists, etc., that present unique problems in an income tax audit. There is a need to discover how the industry operates, what sources of income are available to these types of taxpayers, and how the income flows through the industry.

There are three major Performing Rights Organizations (PROs). These organizations pay performance royalties to songwriters. ASCAP is the largest for rock and roll and pop music. BMI is the largest for country music, and SESAC is the largest for gospel music. There are other smaller PROs and some foreign Performing Rights Organizations. A listing is contained at the end of this guide.

ASCAP collected \$291 million in royalties and BMI collected \$242 million in royalties during 1988. ASCAP paid over 80 percent of these funds to its writers. Payment schedules vary by organization. Most payments are made on a quarterly or semiannual basis. All PROs issue Forms 1099 on the royalties paid to their writers.

Mechanical royalties are paid for the reproduction of songs in the form of tapes, records, or sheet music. This also includes synchronization fees for videos and music for motion pictures and television films. The Harry Fox Agency collected over \$200 million in 1988 and distributed it to over 6,000 publishers. The publishers keep one-half of the royalties and distribute one-half to the writers. The writers normally get a payment statement twice a year as well as a Form 1099 from the publisher. Quarterly accountings and payments are made.

Record companies pay from \$3,000 to \$150,000 "up front" to produce a record. The record company recovers its full cost from record sales before the artist gets anything. After costs are recovered, a percentage is deducted for return of records and the cost of the record jacket. The artist will get 5 percent to 13 percent of the suggested retail after the above amounts are deducted. It is suggested that examiners review the contract to determine if it calls for a percentage of retail or wholesale.

Unions provide services to their members which includes collecting fees earned by their members. The unions are a good source from which you can obtain income information. The American Federation of Musicians (AF of M) is the seventh largest union in the country. A directory which lists members of local unions is available upon request from unions located in your area. The directories are

categorized by instruments played, phone numbers, and social security numbers. The American Federation of Television and Radio Artists (AFTRA) is the union for the artists. Unions usually have a record of each job or session performed that was reported to them. Many payments to artists go through unions; or dues are withheld from the payments and sent to the union. The union has a set pay scale that its members receive for their performance on union sessions.

A promoter buys talent and places it in an auditorium, stadium, etc. Promoters usually pay the talent 50 percent up front and 50 percent at the gate. They may lose money booking acts that do not sell tickets. The promoter has to pay the auditorium or stadium a guaranty for the dates scheduled or a guaranty plus a percentage of the box office. The auditorium staff attempts to take an inventory of souvenirs before and after a concert but this procedure is difficult. They usually rely on the integrity of the artist's staff to give a proper accounting of souvenir sales. The artist's souvenir sales are normally handled by bus drivers and/or band members, who receive a percentage of sales. Some artists hire companies to conduct these sales. A manifest (box office report prepared for the night of the concert) is used to determine the split of the money from the concert. The artist's manager, the promoter, and the ticket agent check the manifest to determine that each receive the proper percentage. Some states periodically audit these reports.

The performing artist is usually a very creative person as far as talent goes, but may lack knowledge in understanding bookkeeping, taxes, and cash flow. Live performances normally support the artist. Artists generally do not receive significant income from television performances. These appearances are made for the purpose of obtaining exposure. Their record sales go hand in hand with concerts, each supporting the other. Artists can receive numerous Forms W-2 and Forms 1099 because they (particularly band members) work for many companies during the year. There may be some question as to whether they are employees or self-employed since their role changes back and forth. See the section on Employment Tax for more information on employment status,

For an artist to work a concert, he or she needs the services of a variety of people. Depending on the drawing power of the artist, he or she will get 60 to 80 percent of the concert receipts and the promoter will get 20 to 40 percent. Some artists negotiate for a percentage of the gate while others contract for a guaranteed flat fee. Examiners should inspect contracts to find this information. The booking agent for the artist receives 10 percent of the artist's income from shows. A personal manager gets around 15 percent and a business manager gets about 5 percent of the artist's gross income. Copies of the booking agents itinerary for the artist should be checked against road receipts. Some artists also have a road manager who travels with them and handles all the road arrangements. The road manager also keeps up with the trip tickets or settlement sheet on income and expenses while on the tour. Banquets and conventions are good money making

opportunities for the artists. They should be on the booking agent's itinerary for the artist along with the regular concerts and fair dates.

Radio plays a special role in the music industry. There wouldn't be hit record if there weren't radios. The program director and music director at each station control the music that is played. Some stations use the services of programming consulting companies to help determine the music that is played on that station. Many stations play only 40 to 60 different records a day. These records are played over and over again. It is difficult for new artists to get their records played on radio stations. Therefore, there is a potential for payoffs (bribes) to station disk jockey's (DJ's) to get them to play certain songs. Initially they occurred only on soul and pop music radio stations; however, it currently is prevalent throughout the industry. The form of the payment is not only cash payment but also luncheons, special entertainment, hotel suites, trips, and gifts.

There are a number of special problems in the music industry. The first is the cost that it takes to generate income. Vast sums are spent for travel, clothes, instruments, bands, buses, motels, and uniforms. There are periods of feast and famine. There is extensive bartering activity in the industry. It occurs in the form of swapouts (advertising for cars, advertising for tickets, etc.). There is a saying in the industry, "If you don't promote, something awful happens--nothing!" The top 10-20 percent of the artists get 80-90 percent of the industry gross income. The other 80-90 percent get the remaining portion. There are many checks and balances in the industry on income reporting, but some activities such as playing small clubs for the door receipts, love offerings at concerts and churches, and concession sales at the small locations, etc., present situations where income may go unreported.

The following general questionnaire should be used in all industry examinations along with the applicable segment questionnaire. (Note: These are recommended questions. The list is not all inclusive.)

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GENERAL QUESTIONNAIRE

- Explain all the different roles you play in the music industry. (Such as performer, songwriter, studio musicians, recording artist, etc.)
- What form of organization have you designed to be involved in these ventures? (Such as sole proprietorship, partnership, corporation, etc.)
- Are you self-employed for any of your activities? (File Schedule "C" and "SE").
- From what sources do you receive income?
- How are these sources of income reported to you? (Form W-2, Form 1099, statement, settlement sheet, contractual agreement, partnership Schedule K-1, etc.)
- Who keeps up with all your records and where are the records currently located?
- What type of expenses do you incur?
- Who keeps up with your expenses and where are the supporting records located?
- What contractual agreements do you have through your business? Furnish copies?
- Have you been examined previously? If so, what were the results?
- What assets have you purchased that you use in your business.
- How have these assets been handled for tax purposes?
- Do you ever receive cash payments? If so, what is done with the money? (Used to pay bills, deposited into a bank account, etc.)

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SONGWRITERS

GENERAL INFORMATION

Songwriters are the creative persons of the music industry. A songwriter may compose music, write lyrics or do both. A songwriter may only write one song or a number of songs called a catalog. Writing a song is only the first step. Many difficulties arise in publishing and promoting a song. Because of the difficulties of getting a song published, many unknown writers have contracts to write exclusively for one publishing company. The contract will have a detailed description of a financial (royalty) agreement.

Songwriters who have signed exclusive writer's contracts generally are paid a cash consideration either in a lump sum, weekly payments, or other special consideration. Under exclusive writer's contracts, payments are commonly termed advances and are recouped from royalties which otherwise become payable to the writer.

There are two types of advances:

Specific -- these are recouped from the royalties of specific works.

General -- these are recoupable from the earnings of an entire catalog.

Songwriters receive income from publishers and performing rights societies. Details of the specific items making up these payments may be found in the book *Sound Advice*. In general, royalties come from the use of songs during live performances or on radio and television. The sale of records, sheet music and the use of songs in plays and movies also generate royalties. Royalties paid for the use of songs are collected by a performing rights society and distributed to the publisher who in turn pays the songwriter 50 percent of the royalties. If a songwriter has collaborated with another songwriter, the royalties will be split per an agreement between the songwriters. If there is no agreement, the industry and the courts have placed an equal value on the music and the lyrics.

Some songwriters will do their own publishing through a corporation they have formed or as a self-employed publisher. If the songwriter is his or her own publisher, royalties will not have to be split between the writer and the publisher. This means the income to the songwriter would be twice what it would be if they were not their own publisher. The disadvantage to being your own publisher is the added costs of a publisher such as: creating demo tapes, executing contracts, and promotion.

RECORD KEEPING

Performing rights societies (BMI, ASCAP, SESAC) and the agencies collecting mechanical royalties keep records of royalties and provide songwriters with statements of the royalties earned in a given year. Generally, songwriters keep a full set of books, including cash receipts and disbursement journals. In addition, they generally have the statements of royalties earned, provided by BMI, ASCAP, SESAC and others.

If there are any deficiencies in a songwriter's records, it usually is not in the area of song writing. For example, many songwriters are studio musicians and the income from that activity is not always reported on the return.

During the initial interview, find out if the individual belongs to any music industry union. The unions generally keep records of the amount of income that musicians make and this information is available to the union member upon request.

EXAMINATION PLAN

It is essential that each examination have a well planned initial interview. A good interview will tie down all potential sources of income.

The planning process should consider large and unusual items, potential copyright sales, potential unreported income and potential shifting of income between related entities.

Interview questions have been developed for the music industry. There is a general questionnaire that relates to the entire industry and there are questionnaires that relate to specific segments of the industry. The general industry questionnaire is located at the front of this handbook and the songwriter questionnaire is located in this section. (Note: These are recommended questions. The list is not all inclusive. The examiner should use his/her judgement when preparing for and conducting the interview.)

Initial document requests should contain at least the following items:

1. Provide statements from ASCAP, BMI and SESAC showing royalties received.
2. Provide all contracts with publishers and collaborators regarding royalty arrangements or any other arrangements.
3. Provide any employment contracts.

4. Show what arrangements are made for royalty advances and how they were handled on the return.
5. Provide all agreements with performing rights societies.
6. Provide agreements with agencies collecting mechanical or synchronization royalties.
7. Provide statements from the unions to which you belong showing the income you earned during the years under examination.

AUDIT ISSUES

1. Gross Income and Capital Items -- Most songwriters receive the bulk of their income from royalties. Royalties can be substantiated with the statements from publishers and performing rights societies. There may be an issue where advances from royalties not yet earned have not been reported as income. Agents should be aware of other sources of income, such as, income earned where an individual went through his or her union for their engagement. Remember the union will provide to the member a statement of income earned. Another issue involves the treatment of the sale of copyrights. Pursuant to IRC Section 1221(3), a copyright in the hands of the taxpayer whose personal efforts created the copyrighted property is excluded from the definition of a capital asset. However, a taxpayer that purchases a copyright from the originator holds the copyright as a capital asset. While the Tax Reform Act 1986 eliminated the differential in the effective tax rates applicable gains versus ordinary income, the distinction between the two types of income still exist. For example, due to limitations on the deductibility of capital losses, an individual taxpayer with excess capital losses would prefer capital gains over ordinary income since capital losses can only be offset against capital gains and up to \$3,000 per year of the individual's ordinary income. Corporate taxpayers with capital losses prefer capital gains since none of their capital losses are deductible against ordinary income. Additionally, the maximum rate at which a taxpayer's net capital gains can be taxed may be less than the maximum rate for ordinary income. IRC section 1(h) prevents the taxation of a noncorporate taxpayer's net capital gains at a rate higher than 28 percent.
2. Expenses -- This area usually contains numerous issues.
 - a. Office in home expenses have been deducted in excess of income or the facility is not used exclusively for business.

- b. Vacation homes, etc., are used by songwriters as a retreat and a place to think. This is not allowable as an ordinary and necessary expense.
 - c. Travel expenses are not properly substantiated, and, in many cases, include personal expenses.
 - d. Songwriters may claim deductions for contributions to a pension plan based on wages paid to a spouse.
3. Employment Tax Issues-- Songwriters are generally considered self-employed individuals. Situations may exist where retired songwriters are receiving royalties from past works. The taxpayer may no longer be active in the business but would still owe self employment tax on any royalties.
4. Related Returns -- Generally related returns were partnerships and corporations formed by a taxpayer to handle the different segments of the industry in which he or she may be involved. These related companies may be used to shift income between entities to get the most beneficial tax treatment.

SONGWRITERS QUESTIONNAIRE

- Do you spend all of your time writing music or do you participate in other facets of the music industry? If other facets, what are they? (Publishing, producing, promoting etc.)
- Do you ever participate in sessions? If so, how do you account for the income you receive from the sessions?
- How many songs have you written? What types of music do you write (pop, country, rock, gospel etc.)?
- Do you perform as well as write music?
- Do you write lyrics and music?
- If you collaborate, do you have a written contract stating how royalties are to be divided? Provide copy.
- How do you market your songs?
- Do you publish your own material?
- If not, do you write exclusively for any one publisher? If you do have an exclusive writer's contract, were you paid a cash consideration to enter into the contract?
- Do you have a contract(s) with your publishers?
- Have you ever requested an audit of your publisher's records? If so, did you recover additional royalties?
- Are any of your songs published in any foreign countries? If so are they registered with any foreign publishers and or sub-publishers?
- How are foreign receipts collected?
- Has any money due from foreign source been frozen by the foreign country? If so, have you invested it in any assets within the country? How and when are you to receive your money?
- Do you have any agreements with the performing rights societies?
- With whom are the songs registered (BMI, ASCAP, SECAC)?

- What unions and guilds do you belong to?
- Do they collect any income on your behalf? If so, do they issue Forms 1099, and to whom?
- Do you have a royalty agreement? If so, provide copy.
- Did you receive Forms 1099 for all your income?
- Do you receive any mechanical royalties or synchronization royalties? If so, from whom?
- Did you receive any advance royalties? If so, from whom and for how much? Are these recoupable from specific songs or from general work?
- Have you considered all royalties received as self employment income?
- Are you aware of any compulsory licenses of your music? If so, how are royalties paid by them received?
- Who owns the copyright in your songs?
- Have you sold any of the rights in any of your songs? If so, when and to whom? How did you report income from this sale?
- Have you assigned any rights in your songs? If so, did you receive any compensation for the assignment?
- Did you have any income from contracts for hire?
- Do you work with any arrangers? If so, how are they paid?
- Who makes demos of your songs? Who incurs the costs of the demos? If someone other than yourself incurs costs, are they recouped from your royalties?
- Do you have an office in your home? If so, gather information about exclusive use, size of office, etc.
- With regard to expenses paid, determine if they are current costs or if they should be deducted from future royalties.
- Have you made any commercial jingles? If so, from whom do you collect royalties?
- Are you involved in any litigation?

PUBLISHERS

GENERAL INFORMATION

Publishing is defined as a group of rights and responsibilities pertaining to compensation including the right to:

1. Make demo tapes of the song in an arrangement or style that demonstrates its potential for popular success.
2. Market the work to potential performers, recording artists, labels, radio or TV advertisers, and motion picture producers.
3. Negotiate, write, and sign all contracts or agreements by which various users acquire their respective rights for desired uses of a composition.
4. Collect and distribute all income from the composition to outstanding creditors and to all the owners of equity, called participants.

Just as a songwriter has a catalog, a publisher has a catalog. The writer's catalog consists of songs he or she has written. The publisher's catalog consists of songs from all writers whose work they publish. Publishers generally get 50 percent of the royalties from the songs they publish excluding certain minor items. The remaining 50 percent of the royalties are paid to composers and lyricist. For example: If the total income from a song is \$1,000, the songwriter will get \$500. The publisher retains \$500 from which he or she must pay the costs of making the demo tape and selling the song to the record company.

RECORD KEEPING

The larger publishing companies are usually corporations that have good internal control and keep complete sets of books. Smaller publishers are generally songwriters as well and they do not always keep good records. The initial interview is crucial in these examinations. In the corporations, the initial interview should establish the quality of internal control. In the individual returns, the interview should establish all sources of income and determine how personal expense are paid. It is common for personal expenses, particularly travel, to be charged as expenses on Schedule C.

There is a unique situation involving publishers in the music industry. There are three primary performing rights societies: ASCAP, BMI, and SESAC. A publisher may have some songs registered with each of these performing rights societies. To register with different societies, a publisher must use a different name for each society. Therefore, a publisher that has songs registered with

multiple performing rights societies will have separate and distinct entity names they would use when they register with each society. These may operate as divisions within one company or they may be separate corporations or partnerships.

The corporations or partnerships are generally on the cash method of accounting. Although good records are kept there may be issues in related companies that use a different accounting method.

EXAMINATION PLAN

The most important part of the exam plan is the initial interview. Other areas of importance are employment taxes and high expenses. In addition, close attention should be paid to related entities.

There is usually little opportunity for unreported income in the publishing business. The income received is from royalties paid by the performing rights societies. These organizations submit statements as to the royalties paid. The statements are also available to the songwriter who will receive half of the royalties paid to publisher. Therefore, where the songwriter and publisher are unrelated, there is little likelihood of receipts being unreported or diverted.

Besides the documents normally requested, an initial document request should include the following:

1. Documents relating to any sales of copyrights or catalogs.
2. Royalties statements.
3. Forms 1099 or other documents supporting royalty expenses.
4. Contracts with songwriters.
5. Statements from all performing rights societies.

AUDIT ISSUES

1. Gross Income -- The primary issue in this area is differences in methods of accounting for income between related entities. Gross income tests for individuals will be basically the same as for any other examination.

2. Expenses -- Adjustments in the expense areas will usually be in travel and entertainment expenses. In addition smaller publishers may claim office in the home expense which should be reviewed.
3. Employment taxes -- Inquiries should be made about the employment status of persons involved with the following:
 - Performers of demo songs;
 - Producers of master demos;
 - Makers of master recordings;
 - Nonunion musicians;
 - Arrangers.
4. Related returns may include separate publishing entities to conform to the requirements of the performing rights societies. If the songwriter is a shareholder, issues with regard to royalty advances may warrant examination.

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PUBLISHERS QUESTIONNAIRE

- What functions are performed by you as a publisher? Do you engage in any other functions besides publishing? (Record production, promotion, arranging, etc.)
- How do you market songs?
- Do you negotiate contracts for rights in songs? How do you change for this?
- Do you incur promotional costs? If so, are they recoupable from the songwriter?
- Do you have songs that are published in foreign countries? If so, how are royalties in those countries collected? Do you have a subpublisher? (Consider international issues.)
- Has any money due from foreign sources been frozen by the foreign country? If so, have you invested it in any assets within the country? When and how will you receive the money?
- To what unions and/or societies do you belong?
- Do receive finders fees for promoting songs?
- Do you have any songwriters under exclusive writer contracts? If so, who? Did you have to pay a fee to secure the exclusive writer contracts?
- Do you own any copyrights? If so, how were they acquired? How were they valued? Do you depreciate them? Have you entered into negotiations to acquire copyrights prior to their renewal period?
- Have you sold any copyrights?
- With whom do you have songs registered (BMI, ASCAP, SESAC)? How do you determine which performing rights society to register with? What company names do you use for each society with whom you are registered? Are these separate corporations, partnerships, etc.?
- Do you receive royalties from the following: From mechanical royalties? From synchronization fees? From television and motion pictures? From compulsory licenses? If so, who pays these royalties? Do you receive Forms 1099?
- Do you receive and disburse songwriters royalties? If so, do you reduce the amount due to songwriters by any expenses?

- How do you determine the amounts to be paid to songwriters?
- Do you enter into royalty agreements? With whom?
- What type of accounting is made to you for royalties you receive?
- Do you receive advance royalties? If so, from whom?
- Do you pay advance royalties? If so, to whom?
- Do you issue Forms 1099? If so, do you issue to all recipients or only those who receive in excess of \$600?
- What employees do you have? What services do they perform?
- Do you make demos of songs? Who do you employ to perform on the demos? How are they paid? Are they considered employees? If not, why?
- Do you make master recordings? Who do you hire to make the master recording? Are they considered employees? If not, why? Are you the producer? If not, who do you employ to produce masters?
- Do you make payments to any musician's union pension and/or welfare funds? Do you issue paychecks to the musicians who work for you?
- Do you work with nonunion musicians? Are they considered employees? If not, why?
- Do you work with any arrangers? If so, are they employees?
- Are you involved in any litigation?

LIVE PERFORMERS

GENERAL INFORMATION

The category "live performers" includes taxpayers ranging from the big name stars to band members and/or local nightclub performers. Examinations found there is a vast range in the way these various taxpayers conduct business.

Stars

"Stars" usually have business managers, road managers, booking agents, etc. working for them. These individuals manage virtually all of the stars' business activities. Consequently, the stars typically have little or no knowledge regarding many of the questions we ask in an examination about their tax return. (For example, how was your reported income determined? How were deductible business expenses determined?) However, the stars are excellent sources for answering questions about their work itself, such as what they do, when where, how, and with whom they work. Therefore, an interview with the star is advisable, if at all possible, because it will give a good overview of the taxpayer and his or her business. Hopefully, this type of information will enable the examiner to focus in on primary areas of audit potential.

Others

Most band members travel with the stars. In addition, most of them perform other activities within the music industry when they are not "on the road," such as doing studio work (recording sessions), performing in local night clubs, song writing, record producing, etc. Being a band member or a night club performer is considered a stepping stone to greater things within the music industry. Therefore, these individuals are usually juggling activities trying to "make it" in the industry. An examiner should not be surprised to see income and expenses from these activities combined and reported on the tax return.

RECORD KEEPING

Stars

Record keeping for the "star" is generally very good. Usually the stars have business manager or others who handle their business affairs. An acceptable bookkeeping system is usually in place. It is not uncommon for a star to be paid in cash. Examinations revealed that these cash payments were properly accounted for in the taxpayer's gross income.

A star's performances are usually booked by a booking agent under a contractual agreement. The contracts may state that the star is to be paid a set fee, a percentage of ticket sales, or a combination of the two. These contracts are an excellent source to use to verify income. Also an itinerary is prepared for road trips and is given to road crews, band members, bus drivers, etc. Reconciliation of the contracts/itineraries to the income reported on the books seems to be a good starting place to verify gross income.

A road manager's responsibilities include receipt of payment following a performance. (A portion of the payment will be paid through the booking agent when the engagement is booked. The remainder will be paid immediately following the performance.) The road manager's role is particularly important when a contract calls for the star's payment to be based on a percentage of ticket sales. It is not unusual for the payments to be made in cash. It is also not unusual for "on the road expenses" to be paid from performance proceeds. An examiner should be alert to these practices to ensure that income and deductions have been properly claimed.

Others

Musicians who have not reached an income level sufficient to hire business managers often have a poor record keeping system. This doesn't appear to be due to an intent to cheat or defraud the Government; rather, it seems to be due to the taxpayers' basic lack of concern for these types of matters. These taxpayers are artists and are totally committed to their work and doing whatever it takes to become a success. Preparation of their yearly tax returns is an afterthought and the quality of the records they maintain to support their tax returns often bear this out.

This, however, should **not** be construed to mean there are automatically large adjustments or deficiencies to be found. Past examinations found records that were often "messy" and required a considerable amount of time to correctly determine what should have been on the return. The result was often offsetting adjustments which result in minimal deficiencies.

EXAMINATION PLAN

When preplanning an examination of a performer, there are numerous sources of information available. See "Information Sources" and "Industry Publications" in this document. As with any case, adequate preplanning and preparation for the examination is necessary to conduct a quality examination. This, however may be even more important when examining agent should be adequately prepared for the commencement of the examination, as well as the initial interview.

Besides the usual records requested in all examinations, the initial document request should include all contracts, statements of income earned from the taxpayer's union, appointment or engagement calendars, and itineraries. Another source that can be utilized to determine performance income for big name entertainers is Billboard magazine which publishes a weekly chart entitled "Boxscore" Top Concert Grosses" which is compiled by an affiliated publication Amusement Business. The chart shows artist names, gross ticket receipts, the number of tickets sold, capacity of the hall, ticket prices, and geographic locations.

Additionally, most performers utilize a booking agency to book performance engagements. The taxpayer's agency will have a listing of concerts which reflect the contract amounts, dates, etc.

For band members, night club performers, etc., consider contacting the union(s) in which the taxpayer is affiliated. The unions keep detailed records regarding earnings of its members. The unions are usually very cooperative in providing the IRS with information. A document request should be issued to the taxpayer asking the taxpayer to contact the union for income information.

AUDIT ISSUES

1. Gross Income -- There are numerous ways a performer can earn income which may never be reported on a Form 1099 nor would the performer's union have a record of it. For example, night club performers may receive cash payments. This is particularly true with a small club, or a one night stand. Also, it is a common practice in the industry for stars to allow band members and other road crew members to man the concession booths at concerts (where T-shirts, hats, etc. are sold). These individuals are generally allowed to keep the profit from the sales. Taxpayers who might be engaged in these activities should be questioned regarding this. The business manager of the entertainer for whom the taxpayer traveled can be contacted to determine how this is handled.

It was found that in most cases the amount of income involved regarding the above transaction was not enough to warrant time consuming audit procedures. It is suggested that the examiner incorporate specific questions regarding possible sources of unreported income into the initial interview. If the examiner determines there is a strong likelihood of unreported income and is unable to obtain the taxpayer's cooperation in establishing the amount, consideration should be given as to how far it is advisable to proceed by weighing time versus potential adjustment.

2. Expenses -- The single most common audit adjustment is disallowance of personal expenses being claimed as business deductions. "Stars" frequently take the position that since they are in the limelight all the time, virtually everything they do is "business" and is part of the image making and

maintaining process. For example, performer may claim deductions for improvements to and maintenance of personal residence because tour buses drive by and the "look" is necessary for the benefit of fans. Performers may claim deductions for vacation homes and boats which are used by the taxpayer and their colleagues as places to go and "create." There may also be deductions for clothing -- stage clothes and street clothes -- which the performer may claim is a necessary expense to create and maintain the image.

While a taxpayer's argument is not totally without merit and can even be made to sound reasonable when presented to an examiner, the examiner should remember that expenses of a personal nature are deemed to be personal unless a taxpayer can prove otherwise. The fact that a taxpayer may derive a peripheral business benefit from an expense does not convert a personal expense to a business deduction.

When on tour, it is common practice for the big name entertainer to provide the transportation and lodging needed for everyone. Therefore, if an examiner finds a band member, road crew member, etc. claiming "away from home expenses" check to make sure the expenses are not reimbursed or paid by the entertainer. Consideration should be given to contacting the star's business manager to determine the policy in place at that time.

3. Employment taxes -- Compliance in the area of employment taxes for performers is generally at an acceptable level. Business managers for the "star" generally insure that employees and contract laborers are properly treated. Refer to the Employment Tax section for more information on employment status.
4. Related returns -- Always ask about any related party activities, related businesses or ventures. Ask to see the tax returns to determine any related issues.
5. Specialists -- Examiners should always consider use of a specialist when appropriate in an examination. Frequently you will find big name entertainers traveling abroad for performances. Use of an international examiner should be considered whenever income from foreign sources is received and seems questionable.

LIVE PERFORMERS QUESTIONNAIRE

- How are live performances scheduled? (Is a booking agent used? Do you schedule your own performances, etc.?)
- Obtain copies of the performance schedule for the year under examination and copies of the engagement contracts, if available.
- Do you usually perform for a fixed fee, or a "percent of the gate," or some other method? Explain, in detail, how this works.
- Are you paid in cash, check or some other method for performance?
- How do you account for these payment? (Is the money deposited? Is a ledger maintained, etc?)
- Do you use any of the performance proceeds to pay any of your on-the-road expenses?
- How are souvenir sales during live performances handled? (Do you manage your own or do you contract it out?)
- Whom do you use to actually man the souvenir booths, and how are they paid?

- Exactly how are proceeds from sales of souvenirs accounted for?

Employment Tax Questions:

"Stars"

- How do you treat members of your band -- as employees or independent contractors? Why?
- How do you treat members of your road crew (technicians, wardrobe, assistants, drivers, etc.) -- as employees or independent contractors?
- Who pays for traveling expenses of band members and road crews?

"Band Members, Road Crew"

- When hired to perform in a band, how are you classified by people you are working for -- employee or independent contractor? What is your understanding of the reason for this treatment?
- Do you pay your own travel expenses when "on the road"? Are you reimbursed or given any allowance for these expenses?

PRODUCERS

GENERAL INFORMATION

Producers are the individuals that bring the musicians, engineers, arrangers, and crews together to do a recording. The producer also draws up contracts and budgets and presents them to the record company for approval.

Record producers usually do the following:

1. Act as talent scout for new artists.
2. Choose the appropriate musical material.
3. Select and oversee arrangers, engineers, studios, and musicians.
4. Control costs and budgets.
5. Assure delivery of a recording.

Producers are usually paid fees in two installments, first half prior to a production and second half upon completion of a production. Contracts between the producer and record company should be reviewed to verify income.

Producers may also receive royalties on records they produce. These royalties generally are a percent (3 percent to 5 percent) of record sales after the record company has recovered all its cost in making the record and royalties have been paid to the artists. If the producer is arranging a new artist, the percentage drops 3 percent to 4 percent. Forms 1099 are not always issued to the producers; therefore, you must inspect all contracts and reconcile to any Form 1099.

If a producer has a client that is well known the producer usually does not incur any of the expenses of a production. These contracts call for a detailed budget, with the record company incurring all expenses including reimbursement to the producer for any of the producers out of pocket expenses. Inspect all contracts to verify who is responsible for costs over budget and who receives benefit for coming in under budget. A producer can be held responsible for costs over budget unless the record company approves the excess costs.

Things to look for:

Video productions are generally contractual arrangements. Some productions are done for a flat fee making all costs the responsibility of the producer. If the production is done for an individual rather than a record company the artist usually retains the rights to the video.

Many videos and records are produced using free-lancers as backup, technical crews or musicians. Free-lancers are nonunion. Look for Form 1099 sent to the free-lancers. Consider employment tax issues.

Custom sessions are situations where an unknown artist has a master recording produced. At this point there is no recording contract with a record company. The producer would receive a flat fee for production.

Some productions, mainly "events" (for example, conference) are produced on a cost plus basis. The main customers or clients in these situations are corporation needing a special event video.

There are several different kinds of compensation arrangements in the industry. Be sure to request and review all contracts. Some producers may own their own studio. There may be additional income from rental. There may also be additional income for arranging for engineers, back up musicians, etc.

Watch for label deals and pressing and distribution deals known as "profit participation deals." On label deals the producer may receive royalties for the producers trade name and label to appear on the record. The producer may also have a profit participation deal where they actually press the record and arrange for distribution rather than receive royalties.

Potential sources of income for producers:

1. Recordings -- royalties
2. Talent scout activities
3. Label deals -- royalties
4. Pressing and distribution deals -- profit participation
5. Studio rental
6. Demo sessions.

RECORD KEEPING

Records that should a available:

1. Contracts
2. Budgets
3. Disbursements journals
4. Royalty statements
5. Ledgers
6. Bank statements, etc.

The larger producers should have all the above and more. Small independent producers may have no books and records. You may have to resort to indirect methods to verify income. Forms 1099, Forms W-2, and third party statements may be the only records of income.

EXAMINATION PLAN

In preplanning producer examinations, make sure contracts are requested up front along with royalty agreements and royalty statements. Budgets should be requested along with comparisons of actual expenses and budgeted expenses.

The initial interview questions are crucial in determining the sources of income of the producers. Include in your questions some comments regarding how the income is generated and recorded especially regarding royalties.

Check the union membership directories for membership in musicians' and writers' unions. Producers can be involved in producing, writing, performing, etc.

In preplanning expenses, make note to scan all contracts to see who is responsible for any costs over budget or who benefits if a production comes in under budget.

AUDIT ISSUES

1. Gross Income -- Pay particular attention to royalty agreements, for example, percentages, method of payment, and timing of payments. Look for the terms of the contracts between producer and clients to see who is responsible for cost being over or under budget and who receives any excess budget not used. Determine if the producer has the opportunity for other types of income, such as, studio rental, talent scouting, writing, etc. Question the producer about any label deals, pressing and distribution deals, agreements with other producers on joint production arrangements.

Watch for reimbursements to producers from record companies for out-of-pocket expenses. Some producers are involved in "custom sessions" where unknown artists pay the producer a set fee for producing a master recording for the artist. All production expenses are borne by the producer. Any royalties on these artists will be at a lower percentage because the artists are unknown. These sessions are often done on a "cash" basis.

2. Expenses -- The examination of the area depends on the contact arrangement between a producer and a record company. Determine who is responsible for expenses, over budget costs, and incidental costs. Determine if any of the expenses borne by the producers are reimbursed to the producers. Determine if any "custom" sessions are done.

Watch certain promotional type expenditures made by producers for the benefit to the artist. Past examinations have shown that some producers will purchase expensive gifts, such as autos, for artists as incentives or for "promotional" reasons without Form 1099 being issued to the recipient. These items should be questioned as to whether they are ordinary and necessary

business expenses to the producer and as to whether they were picked up by the recipient as income.

Travel and entertainment expenses should be evaluated as to how paid and what documentation is available.

3. Capital expenses -- Costs incurred to produce record masters should be capitalized. The flow of income approach is used to amortize record masters unless the 3-year safe harbor alternative can be used. The safe harbor allows depreciation/amortization of costs at 50 percent in the first year, 25 percent in the next 2 years.

Demonstration records are handled differently. Costs to produce demo records are not capitalized and depreciated. Taxpayers can make a choice to either fully deduct the costs in the year expended or to make an allowance for research and experimental expenses that is similar to depreciation. This allowance, used for assets that have no determinable useful life, spreads the expense of the demo record over a period of 60 or more months.

4. Employment taxes - Producers arrange for engineers, musicians, arrangers, back-up vocalists, etc., when producing a record. Some producers have these individuals on staff while others use union members or free-lancers. Ask specific questions on any contract or verbal agreement the producer has with engineers, musicians, etc., to determine the control the producer has over these individuals.

Remember, in raising the issue of employee versus independent contractors, a safe haven is created for the taxpayer when we determine that the taxpayer is not an employer or if we fail to even raise the issue. Refer to the section on employment tax for more information on employment status.

Another issue examiners should consider is the handling of royalties received. Royalties received are subject to self-employment tax if received by the creator of a work or by the person who earned them. Past examinations have shown that taxpayers have placed these royalties on Schedule E, or included them on the face of the Forms 1040. Watch for instances where royalties are placed on the returns to make sure applicable self-employment taxes are collected.

5. Related returns - Many producers are engaged in other areas of the music business; for example song writing, publishing, and performing. These producers could have separate entities set up for their other activities. For example, a producer's production activities could be in corporate form while his song writing could be a Schedule C business. Always ask about any other related party activities, related businesses, or ventures. Ask to see the tax returns to determine any related issues.

6. Use of specialists -- Be aware that the music industry is a complex industry. If valuation issues or international issues are present, contact an engineer or international specialist for assistance.

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PRODUCERS QUESTIONNAIRE

- Do you have your own studio, engineers, arrangers, etc? If not, whom do you use in your recordings -- free-lancers or union members? If free-lancers are used, how are they paid (by union scale or some lesser scale; cash or check?)
- Are you involved in any talent scout activities?
- How are excess costs over budget handled? Are the excess costs the producer's responsibility?
- Are you involved in any label "deals"? If so, do you have fixed and/or royalty compensation from the record company?
- Are you involved in any pressing and distribution deals (profit participation deals)?
- What percentage of royalty do you normally receive from a record company? Do you receive a higher percentage from a major artist?

For Independent Producers (Not Associated With a Record Company):

- Do the record companies provide a stated recording fund for each production or do you use a predetermined budget?

- Are advance royalties ever paid to you or the artist? Is there a set scale for these advances? Are the advances recoupable from producer royalties?
- Do you give a "producer guarantee" (to pay excess cost over recording fund)?
- How do you handle "demo" production costs?
- What are "custom" sessions? Do you offer these sessions? If so, whom do you use to back up the artist, -- free-lancers or union members? Are the free-lancers paid union scale? If not, why?
- Do you have renewal contract options with record companies?
- Who gets the excess recording fund, if any, after the production is complete?
- Do you control the music publishing rights on original recorded material?

Employment Tax Questions:

- When producing or recording, what is the arrangement? Does the record company pay a flat fee for a finished product or are you hired to produce a product and paid a salary for your services?
- If paid a flat fee, what is your arrangement with musicians and performers hired to make a record? Are they paid by the hour, day, or a flat rate?
- Are these musicians and performers treated as employees or independent contractors?
- If you are paid a salary for your services, do you act as an agent for the record company for the purposes of hiring musicians and performers?
- If acting as an agent for a record company, how are musicians and performers hired for recording treated -- employees or independent contractors?
- What is your source for obtaining musicians and performers used to produce records? (local unions, word of mouth, etc.)

MANAGERS

GENERAL INFORMATION

The classification of "management activities" include a wide variety of occupations. For the purposes of this guide, the discussion is being limited to the occupations which were found to be most prevalent in the industry: booking agent, business manager, road manager, and personal manager.

A booking agent is a business finder and neighbor. A booking agent finds or receives offers of employment for their clients and negotiates a contract. An agent is compensated by a commission, which is normally 10 to 15 percent of the gross contract. The rate depends on the particular talent union involved and the duration of the engagement negotiated. The commission usually applies for the life of the contract and any renewals. Booking agents are independent contractors and the entertainers are their clients. Large booking agencies may have thousands of clients.

It is the usual practice of recognized, successful artists to employ a business manager. This person will often be an accountant or a tax attorney who will hold the purse strings, manage investments, and keep a close watch over the tax consequences of the artist's affairs. Fees for these services range from 2 to 6 percent of the gross receipts handled, unless a monthly or annual flat fee is arranged.

A road manager is usually engaged by the personal manager or business manager to travel with an artist. It is the road manager's responsibility to handle the numerous business matters "on the road" such as transportation, hotels, collections, as well as stage, sound, and lighting needs.

Personal managers give advice and counsel to artists in the following areas:

1. The selection of literary, artistic, and musical materials.
2. Any and all matters relating to publicity, public relations, and advertising.
3. The adoption of the proper format for the best presentation of the artists' talents.
4. The selection of booking agents to procure maximum employment for the artists.
5. The types of employment which the artists should accept and which would prove most beneficial to their careers.

6. The selection and supervision of accountants and attorney's other than those used by the business manager.

RECORD KEEPING

Generally the record keeping by managers is acceptable. These taxpayers appear to be much more "business-minded" than others in the music industry. Therefore, they are more informed of the types of record keeping required.

EXAMINATION PLAN

The single most important consideration when planning the examination of a manager in the music industry is to design a plan to determine the manager's relationship to the entertainer(s). To successfully examine a manager, you must first know exactly what they do, who pays them, and how the payment is computed.

An initial interview questionnaire developed for the audit of manager should be used as a starting point to be expanded as warranted.

Early in the examination it is essential that the specific duties of a taxpayer, who is a manager, be determined. It is also vital that the means in which the taxpayer is paid, and his or her relationship to the entertainer be established. This can best be achieved in the initial interview. Follow-up questions may be asked on document requests. Statements from the entertainer may help corroborate the taxpayer's testimony.

AUDIT ISSUES

1. Gross Income -- Most managers receive Form W-2 as employees, or Forms 1099 as contract laborers. IRP transcripts should be utilized. Comparison of the Forms W-2 and/or Forms 1099 with the taxpayer's testimony as to his or her activities may indicate that very little additional testing of income is warranted. Of course, other means of verifying income may be deemed necessary and should be employed as warranted.
2. Expenses -- Business expenses should be tested to ensure that the managers are not being reimbursed by the entertainer for any out-of-pocket expenses. It is common practice for employees to be reimbursed by the entertainers for any out-of-pocket expenses. Expenses should be reviewed for items that are capital in nature.
3. Employment Taxes -- Compliance in the area of employment taxes is generally at an acceptable level. Refer to the section on employment tax for more information on employment status.

4. **Related Returns** -- Frequently an examiner will find it necessary to pick up related returns of taxpayers in the music industry due to the close working relationships between taxpayers within the industry. When examining a taxpayer in the music industry, an examiner should be alert to any information which may indicate potential adjustments on a related return.

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MANAGEMENT QUESTIONNAIRE

- Explain in detail your management responsibilities.
- For whom do you perform these duties?
- Are you an employee of a "star," or do you work as an independent contractor?
- How are you paid for your services? (Regular paycheck, by the job, on commission, etc.)
- What contractual agreements have you entered into as part of your job? Provide copies.
- What expenses do you incur in performing your job? Are you reimbursed for any of these expenses by anyone else or any other entity?

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VIDEOS

GENERAL INFORMATION

In the late 1980's, music videos became a major part of the music industry. A music video is usually released along with the release of a new record. A music video is a short visualization of the artist and his or her music. The music videos have been a significant influence in the marketing and sales of records and tapes.

Music videos are contractual in nature regarding exclusive rights to exploitation and royalty percentages. Income is derived from commercial network TV, cable TV, local TV, clubs, jukeboxes, and videocassette and videodisc sales. Some record companies now offer package deals to an artist to produce his or her records as well as the videos to accompany and enhance the records. Video rights are major issues in contract negotiations. The rights to the exploitation of the videos and the financing of the videos are negotiation points.

Most of the time a contract between a record company and an artist is considered an employment contract for purposes of the Copyright Act. This does not necessarily mean that the artist is an employee of the record company for employment tax purposes. The contract and the relationship between the record company and the artist should be evaluated to determine if an employer-employee relationship exists.

Under many of the contracts between an artist and a record company, the record company will advance the costs of the video production. Costs to produce a video range from \$15,000 to \$150,000. However, most costs are below \$100,000 unless the artist is a big name artist. Recoupment of these costs depend on whether the video is produced for promotional or commercial reasons. The contract should specify if the video is promotional or commercial. The recoupment will directly affect the compensation to producer and artist.

Video producers may also be the record producer or they can just produce videos only. Video producers may also be involved in corporate and/or promotional video productions are arranged as a cost-plus contract. Video producers who only produce videos generally charge a flat fee to a record company or artist.

RECORD KEEPING

As with record producers, video producers enter into a contract to produce music videos. Many times the video production agreement will be embodied in the record production agreement. Royalty statements should be available and easily

matched to contract agreements.

Many of the smaller producers keep no formal set of books. At times you may have only bank statements and canceled checks. Pay particular attention to the contracts and agreements.

In reading the contracts, note who is responsible for costs over budgets (if budgets are used) and who receives any excess budget over costs. If flat fees are charged, note who is responsible for any excess costs or if incidental costs are reimbursed.

EXAMINATION PLAN

Requests for contracts should be noted in your examination plan along with budgets and royalty statements.

The initial interview questions should be tailored to identify all potential sources of income and different types of videos produced and the compensation arrangements.

Make sure you plan to ask specific questions about cost and budget arrangements and/or any reimbursement agreements.

In addition to the standard items requested in the initial document request all contracts, royalty statements and/or agreements should be requested.

AUDIT ISSUES

1. Gross Income -- Again, the contracts are a key element in determining income based on the arrangement of the parties. Contracts will normally include fee arrangement, excess cost agreements, reimbursement, cost under budget agreements, and incidental cost agreements.

Determine if the producer is involved in other activities such as equipment or studio rental, promotion activities, etc. Watch for related entities set up to do other business ventures; for example, video productions as a corporation and song writing as a Schedule C.

2. Expenses -- The examination of this area depends on the contract arrangement between video producer and artist and/or record company. Determine who is responsible for the expenses of production and incidentals, just as under record producers.
3. Employment taxes -- As in record producing, the video producer will arrange for all backup personnel such as actors, cameramen, set directors, etc. involved in a music video. By inquiring about the nature of the relationship between

these individuals and the producer, you can make a sound decision as to any employment relationship. When an audit is performed and an employer - employee relationship is not determined or raised the taxpayer is protected by a safe haven in future audits unless the facts of the situation change. Refer to the section on employment tax for more information on employment status.

4. Related returns -- Always ask about any related party activities, related businesses or ventures. Ask to see the tax returns to determine any related issues.
5. Specialists -- Examiners should always consider use of a specialist when appropriate in an examination. Use of an international examiner should be considered whenever income from foreign sources is received and seems questionable.

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VIDEOS QUESTIONNAIRE

- Is a video produced with each new recording?
- Do you have agreements with any companies for exclusive rights to your videos? If so, for how long?
- Do you have rights from any artists? If so, who and what are the nature of the agreements?
- Who is responsible for financing and producing the videos?
- Who has the copyright to the music videos?
- Are your music videos considered "work made for hire"?
- Who retains the exploitation rights on: home video sales, TV, promotional use, third party broadcast licensing, nightclubs?
- Do you have any licensing agreements with music video library agencies?
- Are you producing primarily promotional or commercial videos, or a combination?

- Who bears the initial cost of producing a video? Is there a video production fund or budget?
- How do you recoup your video production costs? (Artist record royalties, video receipts, etc.)
- How are royalties handled regarding a video production?
- How are the videos distributed? Who is responsible for the distribution?

Employment Tax Questions:

- When hiring performers and technicians, how are they classified -- employees or independent contractors?
- How are performers and technicians obtained -- union or word of mouth etc?
- If traveling expenses are incurred, who pays the expenses?
- Are you paid for a finished product or does the client have input and control over the process of making the video, for example, approval of people hired, rate of pay for performers, technicians, etc.?

EMPLOYMENT TAX

The following is a brief outline of the law regarding employment status and employment tax relief. It is important to note that either worker classification--independent contractor or employee--can be a valid and appropriate business choice. For an in-depth discussion, see the training materials on determining employment status. "Independent Contractor or Employee?" Training 3320-102 (Rev. 10-96) TPDS 84238I. The training materials are also available from the IRS Home Page (<http://www.irs.ustreas.gov>).

The first step in any case involving worker classification is to consider section 530. Section 530 of the Revenue Act of 1978 was enacted by Congress to provide relief to certain taxpayers who had acted in good faith in classifying their workers from the potentially harsh retroactive tax liabilities resulting from IRS reclassification of independent contractors as employees. The statute is a relief provision and provides an alternative method by which to avoid employment tax liability where a taxpayer cannot establish his workers are or were independent contractors.

In order to qualify for section 530 relief, the business must meet consistency and reasonable basis tests. The consistency test requires that the business has filed all required Forms 1099 with respect to the worker for the period, on a basis consistent with treatment of the worker as not being an employee (reporting consistency); and that the business has treated all workers in similar positions the same (substantive consistency).

Under the reasonable basis test, the business must have had some reasonable basis for not treating the worker as an employee. There are three "safe harbors" that form the basis for an objective reasonable basis standard under section 530. These safe harbors are: (1) judicial precedent, published rulings, technical advice to the taxpayer or a letter ruling to the taxpayer; (2) a past favorable IRS audit on the same issue; and (3) long-standing, recognized practice of a significant segment of the industry in which the individual was engaged. A business that fails to meet any of these three safe havens may still be entitled to relief if it can demonstrate that it relied on some other reasonable basis for not treating a worker as an employee.

Before or at the beginning of any audit inquiry relating to employment status, an agent must provide the taxpayer with a written notice of the provisions of section 530. If the requirements of section 530 are met, a business may be entitled to relief from federal employment tax obligations. Section 530 terminates the business's, not the worker's employment tax liability and any interest or penalties attributable to the liability for employment taxes.

In general, the common law rules are applied in determining the employer-employee relationship. Internal Revenue Code section 3121 (d) (2). Nationwide Mutual Insurance Co. V. Darden, 503 U.S. 318 (1992).

Guides for determining a worker's employment status are found in three substantially similar sections of the Employment Tax Regulations; namely, sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1, relating to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding, respectively.

The regulations provide that, generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services not only as to the result to be accomplished by the work but also as to the details and means by which that result is accomplished. The examiner will need to weigh the facts and circumstances of each case and determine worker status accordingly.

The training materials provide more information on the method of analysis used in determining employment status. They explain the kinds of facts to be considered, including those evidencing behavioral control, those evidencing financial control, and those evidencing the relationship of the parties.

MUSIC INDUSTRY RESEARCH AND PUBLICATIONS

The Country Music Foundation Library located in the basement of the Country Music Hall of Fame in Nashville, Tennessee, is an excellent source of music research. The library has current and back issues of trade magazines such as Music Row Magazine, Billboard, Music City News, etc.; current and back newspaper articles from around the country; music "textbooks" covering how to get started in the music business; what managers, agents, producers, publishers, etc., do; music careers; music business terms; how to open doors on Music Row; and books on each individual facet of the music business, including how the companies are set up and what their employees' functions are. The Library also keeps clippings of newspaper articles by music industry segment from all over the country.

The manager of the library can assist in pulling the research materials. However, you must call for an appointment before visiting.

TRADE MAGAZINES

"Close Up," the CMA magazine, includes up-to-date news in country music, new signings etc.

"Music City News," called the world's largest monthly country music magazine, include new signings, who to watch as far as new stars, etc.

"Music Row," Nashville's Music Industry Publication, includes music business news, new companies, new signings, music industry directory, recent concert grosses, financial pages, etc.

"Billboard," weekly trade publication listing top songs, records, etc. includes current music news.

"Cash Box," similar to "Billboard."

"Pollstar," weekly guide furnishing tour itineraries, box office results, contact directories, news items, management of stars, etc.

"Performance Magazine", list of concert and performance dates.

BOOKS

The Music Business, Crown Publishers, includes how to get started, what manager, agents, and publishers do, recording process, how records are sold and distributed, how to get recording contracts. Also includes a glossary of music business terms.

The Songwriter's and Musician's Guide to Nashville, Writer's Digest Books, includes list of music business companies in Nashville, how to open doors in Nashville and on Music Row, when and where certain music organizations meet in Nashville.

Successful Artist Management, Billboard Publications, includes finding a manager/artist, contracts, duties of attorneys, accountants, and advisors, music publishing, merchandising, endorsements, money management.

Music Publishing, Writer's Digest Books, includes publishing and copyright law, royalties, inside the publishing company, future of music publishing, sample contracts.

Succeeding in the Big World of Music, Little, Brown, & Co., includes functions and business responsibilities of music industry personnel such as producer, engineer, writer, arranger, publisher, manager, etc.

This Business of Music and More of This Business of Music, excellent source of the music business from getting into the business to tax implications of certain aspects of the business. These books are being used as the source books for many people in the music business. Copies of these books are available in the Music Industry group.

Other Source Books

Encyclopedia of Music Business Sound Advice

Nashville Red Book

Music Industry Index

Dictionary of Music Production and Engineering Terminology

NOTE: These books are available through either the public library or the Country Music Foundation Library.

MUSIC INDUSTRY DIRECTORIES

AFM Membership Directory, musicians

AFTRA Membership Directory, TV and recording artists

Music Business Directory

Nashville Redbook

Tennessee Production Directory

NOTE: Other Districts should check with their local unions to obtain their directories.

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MUSIC INDUSTRY ORGANIZATIONS

The following is a list of unions, guilds, trade associations and performing rights organizations that are involved in the music industry.

UNIONS AND GUILDS

1. American Federation of Television and Radio Artists (AFTRA).

This union represents 55,000 professional performers and broadcasters through contract negotiation and administration of live and taped broadcast performances.

2. American Federation of Musicians (AF of M).

A union that represents, negotiates, administers and protects contractual rights of its 190,000 professional members in the United States and Canada.

3. Screen Actors Guild (SAG).

Members must be a working member of AFTRA, AGMA or AGVA, and have employment as a player in a film or commercial.

4. American Guild of Musical Artists (AGMA).

A labor union of 5,000 opera singers, ballet and modern dance companies.

5. American Guild of Variety Artists (AGVA).

A labor union that represents comic, jugglers, magician, variety acts, and nightclub singers.

6. The Songwriters Guild of America.

An organization that fosters and protects its membership of 4,500 American songwriters.

TRADE ASSOCIATIONS

1. National Association of Record Merchandisers (NARM).

A trade association representing the interests of the merchandising segment of the recording industry with 700 members, including retailers, rack-jobbers, and independent distributors.

2. National Academy of Recording Arts and Sciences (NARAS).

The academy is the sponsor of the Grammy Awards and its 8,000 members include singers, musicians, songwriters, composers, engineers, and industry professionals.

3. Recording Industry Association of America (RIAA).

A trade association whose members create, produce and market 95 percent of all recordings produced and sold in the United States.

4. National Music Publishers Association/**Harry Fox Agency**.

A trade association and administration agent for music publishers that collects and administers royalties and lobbies on behalf of its 400 members.

5. National Association of Broadcasters (NAB).

A trade association that serves and represents 5,000 radio stations, 950 TV stations as well as the networks.

6. Nashville Songwriters Association International.

The organization is dedicated to the advancement of musical composition and the protection of 2,600 members songwriters' rights.

7. Country Music Association (CMA).

A trade association of 8,000 members that promotes and develops country music worldwide and host the annual CMA awards.

8. Gospel Music Association (GMA).

A service organization of 2,200 members, including international representation, that promotes gospel music.

9. International Tape Association (ITA).

A trade association of more than 450 magnetic and optical media manufacturers and related industries.
10. National Association of Music Merchants.

A trade association of the music products industry, representing approximately 4,000 retailers of musical instruments and allied products as well as manufacturers, distributors, and jobbers of instruments and accessories.
11. Video Software Dealers Association.

An international trade association of 4,300 video retailers, manufacturers, and related companies involved in the home video industry.

PERFORMING RIGHTS ORGANIZATIONS

1. American Society of Composers, Authors and Publishers (ASCAP).

The society lobbies, licenses, and collects and distributes fees, on behalf of 50,000 writers and publishers, for the rights to public performance of their copyrighted musical works.
2. Broadcast Music Inc. (BMI).

A licensing organization that lobbies licenses, collects and distributes royalty fees for the publicly performed works of its membership of 100,000 U.S. writers, publishers and international affiliate societies.
3. SESAC Inc.

A performing rights organization of 3,000 songwriters and publishers that licenses and collects fees for the use of its members works.

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GLOSSARY

Advance -- A fee paid to an artist as part of the royalty compensation package.

A. and R. Artists and Repertoire -- Department of record company responsible for talent acquisition.

AM -- In electronic communications, a type of radio station whose signal is encoded by its carrier wave being Amplitude Modulated.

ANALOG -- The electronic representation of a sound wave as a physical copy.

AOR -- Album Oriented Rock -- A radio program usually consisting of various selections from rock albums.

ARB -- Arbitron. Formerly the American Research Bureau. A television ratings company.

Birch Report -- A radio ratings service.

Billboard -- A leading trade industry magazine whose charts are used extensively.

Bootlegging -- The illegal practice of recording an artist without permission and then offering the recording for sale.

C.D. Compact Disc -- A format for recordings using electronic digital technology.

Chart -- Trade newspaper listing of records according to their relative popularity. Charts are an important barometer of a record's success.

CHR Contemporary Hit Radio -- A radio programming scheme much like Top 40.

Contractor -- The person, required by union contracts, to hire performers. This person is paid double scale.

Cooperative Advertising-coop -- An advertising scheme wherein a record company will share advertising costs of a product with a retailer. This becomes shared advertising with mutual benefits.

Counterfeiting -- The illegal practice and process of copying a record (tape, C.D.) and then offering the copies for sale as originals.

Creative Services -- Department within a record company responsible for album covers, posters and other visual sales tools.

Cross-collateralization -- A clause within recording contracts allowing the profits from each successful recording to be used to pay for the expenses of unsuccessful recordings under the same contractual arrangement.

Crossover -- A record intended for a specialized audience but finds success with other such audiences.

Cut out -- A record or tape that has reached the sales saturation in the marketplace. These items are then sold at tremendous discounts to dealers with the expectation that additional profit will be realized after the maximum of new record sales point.

D.A.T. -- Digital Audio Tape -- A high quality recording/playback technology which uses pulse-code modulation to encode information onto a tape.

DBS -- Direct Broadcast Satellite -- A method of program distribution which uses a high power satellite to transmit a signal to a highly defined coverage area.

DeFacto Network -- A broadcast scheme wherein independent broadcast stations, not affiliated with a dedicated network, provide access to program suppliers for limited times.

Demographic -- A statistical representation of an audience segment.

Digital -- In recording and playback the technology wherein the encoded/decoded information is represented as a binary code, series of ones and zeros.

Doubling -- A recording technique which requires a musician or singer to perform the same art twice on a different recording track.

Electromagnetic recording -- The process in which program material is magnetically encoded onto a medium usually magnetic tape.

FCC (Federal Communications Commission) -- Government agency responsible for licensing all radio, television, satellite, and telephone communications.

FTC (Federal Trade Communication)-- Government agency responsible for regulation of interstate commerce.

F. M. (Frequency Modulation) -- In radio communication a station whose carrier signal is changed by changes in source frequency.

Free Goods -- Records supplied by manufacturers at no charge as an incentive for sales.

Freelancer -- A writer or an artist who sells his services to employers without a long-term commitment to any one of them.

Grand Rights -- A license issued by a copyright holder through its performing rights organization for use of material in musical drama.

Grammy -- Award given annually by NARAS.

House Producer -- A producer who is usually an employee of a record company.

House Music -- A style of mixing music wherein different artists and albums are combined to produce a continuous dance track.

Independent Record Company -- A record company that does not provide full manufacturing and distribution services.

Independent Promotion Person -- Free-lance professional used by companies to augment its own staff.

Independent Producer -- Free-lance creative production executive hired by companies on a project by project basis.

Jukebox -- A coin operated electronic record player.

List price -- The retail price of a project.

Master -- The finished production reduced to a two track tape. Subsequent copies are made in several formats for resale.

Mechanical -- A license given by a copyright owner authorizing the reproduction of records and tapes.

Mom and Pop -- A very small retail outlet.

NAC (New Age) -- A radio format identified by an almost jazz-like presentation.

Needle drop -- A fee assessed by music supplier for using their music as background.

One Stop -- A sub-distributor whose clients are usually smaller record retail outlets and jukebox operators.

P. and D. (Pressing and Distribution) -- An arrangement between large and small companies wherein the large company will provide these service to the smaller one for a fee.

Payola -- The illegal giving or receiving of any gratuity to obtain favorable radio or televisionair playy.

Polyvinyl Chloride -- A petroleum derivative that serves as the raw material in the manufacturing of vinyl discs.

Rack Jobber -- A music merchandiser responsible for selling records in non-music outlets.

R and B (radio) -- Rhythm and Blues. A radio format designed to reach a predominantly black audience. This format recognized by play list of black artists performing music classified as blues and up tempo dance songs.

R and R (Radio Records) - An industry trade publication.

Returns -- Unsold records or tapes sent back to manufacturers for cash credit to buyer's account.

Royalties -- A contractual payment to an artist or producer representing a percentage of all actual record sales.

Sampling -- An electronic digital process in which an original analog sound is converted to a binary code for later playback in an electronic storage device.

Scale -- A fee assessed by unions on behalf of its members representing the minimum payment to be charged for work.

Top 40 -- A dated radio music programming technique wherein a station restricts the records it plays to a limited number --40 records-- with each given exposure based upon its popularity.

Urban Contemporary -- A radio format designed to reach, primarily, a Black audience.

UPC (Universal Product Code) -- An identifying mark on packaging which is used by digital scanning devices for inventory control.

Wholesale -- The price manufacturers charge for a product to its distributors. This price represents the manufacturers expense in producing the product plus a profit.