

Edited Content Extracted from: section 203–204.docx

PART II. CONTRIBUTIONS CONTINUED

SUB-PART B: SELF-EMPLOYED

Section 203. Determination of Self-Employment & Employer-Employee Relationship

The National Government of the Republic of Palau is an employer within the Republic (ROP). A person employed under a contract may be a self-employed independent contractor or may be in an employer-employee relationship. The factors listed in subsection (d) will be used to make that determination. The labeling of the person in the contract or by any outside party is a factor to consider, but shall not be definitive, in any determination to be made by the Administrator under this section.

The Administrator will determine whether a person is an employee or self-employed using the factors listed below:

1. Behavioral:

- Who controls or has the right to control what the worker does and how the worker does his or her job;
- Who sets the hours of work, the work schedule, or restricts one from working for other persons;
- Who designates the location, place, or area of work;
- Whether the worker must do the work themselves (do not have the power to subcontract the work being performed); and,
- Who pays expenses related to the work being performed.

2. Financial:

- How the worker is paid (by the hour, week, month, by lump sum);
- Who provides tools, vehicles, and supplies;
- Who invests in training, facilities, and equipment;
- What types of benefits are in place (health or other insurance, vacation or sick pay, participating in pension plan, etc.);
- Type of Relationship:
 - Does the worker perform services for a number of persons or firms at the same time;
 - Does the worker advertise to the general public or solicit others that he or she is available to perform services;
 - What written contracts are in place;
 - What is the duration of the work relationship;
 - Can either party terminate the relationship without being liable for damages;
 - The worker makes a profit or suffers a loss depending on the success of the business venture (an employee has no chance for a profit or loss);

Any other factors deemed appropriate by the Administrator.

Some factors may indicate that the worker is an employee, while other factors indicate that the worker is

self-employed. There is no “magic” or set number of factors that “makes” the worker an employee or self-employed, and no one factor stands alone in making this determination. Also, factors which are relevant in one situation may not be relevant in another. The keys are to look at the entire relationship, consider the degree or extent of the right to direct and control, and finally, to document each of the factors used in coming up with the determination.

[41 PNC § 702(a)(8), (11), & (13) & U.S. IRS]

A determination made by the Administrator, based on one or more of the above-mentioned factors that a person is an employee or is self-employed, is rebuttable only by clear and convincing evidence. The burden of proof lies with a person appealing a determination made by the Administration. A written determination regarding such matter shall be made available upon written request to the Administrator.

A self-employed person shall be presumed to be his own employer and his own employee, and accordingly is liable to pay to the System with respect to himself for both employer contributions and employee contributions, and shall include himself in reports under section 745.

[41 PNC 741(a), amended per Section 2 of RPPL No. 9-12]

A self-employed individual shall include an officer in a corporation or partner in a partnership or limited ownership corporation that is registered in Palau but does not have employees in Palau.

[41 PNC 741 (e), as amended by Section 2 of RPPL No. 9-12]

Section 204. Self-employed With At Least One Employee

- Remuneration: A self-employed person, who has at least one employee, employed for wages, in a given quarter during the calendar year who receives remuneration from the self-employed person shall be presumed to receive as remuneration in any quarter twice the amount paid to the highest paid employee in that quarter subject to the quarterly maximum.

Example: An employer who is self-employed has three (3) employees which receive \$350, \$500, and \$625 in remuneration in a given quarter. The employer is assumed to be an employee so his or her remuneration will be twice the amount paid to the highest paid employee of that quarter. The highest paid employee receives \$625, so the employer is presumed to receive \$1,250 (\$625 multiplied by 2). The employer is required by law to report their wages as \$1,250.

Reporting: The self-employed person shall have one month from the end of each quarter to file their Social Security contributions report. Any reports received more than one month from the end of the quarter shall be deemed delinquent.

A self-employed person who has, in a given quarter, at least one employee who receives remuneration from him, shall be presumed to receive in any quarter, as remuneration, twice the amount paid to his highest-paid employee in that quarter. A self-employed person under this section who has more than one business, for each of which separate quarterly reports are submitted, shall report his or her wages under the business which has

the highest paid employee; such self-employed persons wages shall be reported at twice the amount of the highest paid employee and shall be included in the same report as the highest paid employee of that business.

[41 PNC § 741(b), as amended by Section 2 of RPPL No. 9-12]