Worker Misclassification
Virginia Tax’s Role

Audit Program
Under the new law, Virginia Tax is required to use the IRS guidelines to determine whether a worker is an employee or an independent contractor.

An auditor must consider all information that provides evidence of the degree of control and independence according to the IRS’s 3 broad categories:

1. Behavioral control: Does the employer control or have the right to control what the worker does and how the worker does their job?

2. Financial control: Are the business aspects of the worker’s job controlled by the payer? This includes aspects such as how the worker is paid, who provides tools and supplies, etc.

3. Type of relationship: Are there written contracts or employee-type benefits such as pension plans, insurance, vacation pay, etc.? Will the relationship continue and is the work performed a key aspect of the business?

You can find more detailed information on the IRS website.

If You’re Found to Be In Violation
The worker misclassification legislation imposes a civil penalty for misclassification in the following amounts:

- Up to $1,000 per misclassified individual found during the first audit
- Up to $2,500 per misclassified individual found during the second audit
- Up to $5,000 per misclassified individual found during the third audit or any subsequent audits

In addition to the civil penalties, if misclassifications are found during a second audit, then that employer will be barred from state government contracts for up to 1 year and up to 2 years for any subsequent offenses.

Want More Information?
For information about your rights following an audit, see pages 7-8 of the Virginia Taxpayer Bill of Rights.

Questions? Please reach out to Virginia Tax at misclassificationofworkers@tax.virginia.gov.

You can also visit our website.