

The difficulties with this approach become apparent when the Bulletin comments on specific contractual terms that indicate one status or the other. Any performing artist whether a dancer, musician or actor who contracts as an individual to form part of a group (such as an actor contracting for a role in a play) will probably have a number of employee attributes listed in the Bulletin. For example, the employing group will likely have:

- (a) ... the right to decide on or change the size of the group with which the artist performs;
- (b) ... continuing authority to dictate the time and place of the artist's performance including rehearsals, ... without obtaining the artist's agreement;
- (c) [the right to] unilaterally change the dates, times and places from those ordinarily scheduled or increase the number of rehearsals or performances.

(para. 8)

Those three criteria (among others) are listed as employee characteristics. The Subcommittee notes that they are characteristic of most *groups* of performing artists, but not necessarily of the *individuals* who have contracted to be part of the group. The criteria tell us how groups of performers function, but little about the individual performers involved. A degree of group control should not necessarily dictate the status for tax purposes of the professional performer. To use these criteria which apply to groups as attributes of the individuals' status, therefore, virtually dictates a finding of employee status.

The reason, however, that many performing artists are *not* classified as employees becomes clear when the Bulletin's criteria for self-employed status are examined. An individual artist may be self-employed if he or she:

- (b) provides his own instruments and other apparatus;
- (c) has a number of engagements with different persons during the course of a year;
- (d) regularly takes auditions or makes application for engagements;
- (e) retains the services of an agent on a continuing basis;

(para. 9)

The criteria are incomplete, difficult to apply, and may lead to contradictory conclusions. Most performing artists share a number of those characteristics and almost all fit criterion (b). Although the fact that self-employed artists provide their own instruments is mentioned, the list omits any mention of requirements for artists to pay for other items such as their own make-up, clothes and lessons. These factors may be the sharpest distinction between many artists and other employees. Mention of the duration of a contract as a factor is also omitted yet the department's approach to symphony contracts stresses their length.

Disney analyzed the nature of performing artists' work and concluded that their work patterns are unique. Whereas typical employees usually work for one employer, performing artists often work part-time on a number of engagements at the same time. Because engagements are usually temporary, artists must continually attempt to generate new contracts,