



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

OFFICE OF  
CHIEF COUNSEL

May 23, 2002

Number: **200226043**  
Release Date: 6/28/2002

CC:PA:CBS:Br3  
POSTN-118530-02  
UILC: 7602.00.00

MEMORANDUM FOR GAIL LONTINE, SBSE, NEWPORT VERMONT

FROM: Joseph W. Clark, Chief Branch 3  
(Collection, Bankruptcy & Summonses) CC:PA:CBS:Br3

SUBJECT: Section 7602(c) and Form SS-8 Determinations

This memorandum responds to your request for advice by e-mail dated April 2, 2002. In accordance with I.R.C. § 6110(k)(3), this Chief Counsel Advice should not be cited as precedent.

BACKGROUND

On July 27, 2000, Collection, Bankruptcy & Summonses sent you a memorandum advising you that when a worker files a FORM SS-8 requesting a determination of employee work status for purposes of federal employment taxes and income tax withholding, the Internal Revenue Service (IRS) should treat both the worker and the employer as taxpayers for purposes of section 7602(c) third party contacts. We reasoned as follows. When a worker submits a FORM SS-8, the IRS records any subsequent third party contacts dealing with the worker's request on the third party contact database under the worker's SSN/MFT. Consequently, if an employer requests a list of section 7602(c) contacts with respect to the FORM SS-8 determination, the IRS will not have a record of contacts relating to the employer on the database. An employer may argue that, though the worker requested the FORM SS-8 determination, any determination the IRS makes regarding withholdings will effect both the worker and the employer. In addition, if a worker requests a letter ruling on an employment issue, the IRS treats both the worker and the employer as the taxpayer. Rev. Proc. 2000-1, 2000-1 I.R.B. 4 (January 3, 2000). Therefore, when investigating a FORM SS-8 request from a worker, the IRS should treat the employer, as well as the worker, as the taxpayer for purposes of section 7602(c).

Recently, you e-mailed us a new set of questions containing the following facts. A drives a truck owned by B. B pays A's wages, but A actually works for company C. In effect, B leases A to C. C supervises A and has control over the work that A does. In these cases, B generally is the employer for purposes of section 3401(d)(1), which defines employer as the person having control of the payment of wages, despite the fact that the employee may have performed the services for

POSTN-118530-02

another person. C, on the other hand, is the common law employer. A requests an SS-8 determination. In making its SS-8 determination, the IRS generally talks to all three people.

### ISSUES

Whether both B and C should be treated as the taxpayer for section 7602(c) purposes when a worker files a FORM SS-8 request.

### DISCUSSION

The logic behind our original advice that when a worker files a FORM SS-8 request, the IRS should treat both the employer and the worker as the taxpayer for purposes of section 7602(c) is that any determination of employee work status for purposes of federal tax withholding will have an impact on both the worker and the employer. This same logic applies to the factual situation outlined above. In determining the employee status for purposes of withholdings, the IRS will gather information from both “employers” and then render a decision. This decision may have an impact on both employers. For example, based on information collected in the investigation, the IRS may determine that, C, the “common law” employer, is also the section 3401(d)(1) employer.

Sometimes the FORM SS-8 only mentions the section 3401(d) employer, *i.e.*, B, as the employer. It does not mention the “common law” employer, *i.e.*, C. This does not effect the status of C. When the IRS investigates the employment situation and discovers C, C also should be treated as the taxpayer for purposes of section 7602(c).

Finally, you noted that when the worker files a FORM SS-8 request, the IRS need not notify the worker when it contacts the employer. You also noted that the IRS need not notify either employer when the IRS contacts one of the other two parties. The IRS does not have to notify the worker when it contacts the employer because the FORM SS-8 requires the worker to give the IRS permission to disclose the worker’s name to the employer before the investigation can proceed. The FORM SS-8 contains no such requirement with respect to the disclosure of the employers to each other or to the worker. Therefore, the IRS must notify each employer before contacting the taxpayer or the other employer.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.