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Person to Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:ET1-PLR-105096-03
Date:
Jun 09 2003

Key:

Firm =

Worker =

Dear

This is in reply to a request for a ruling to determine the federal employment tax status of the above-named Worker with respect to services provided for a federal agency (Firm) from August, 2001 through September, 2002. The federal employment taxes are those imposed by the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source on Wages. This ruling is based on the information furnished by both the Worker and the Firm.

The Worker provided services as an accounting technician. The Worker was hired as a contract employee under a personal services contract. The Worker was provided on-the-job training by the Firm. The Worker performed on the Firm's premises and it provided all the supplies, equipment and materials needed in the performance of the services. The Worker was required to provide the services personally and was paid on an hourly rate basis. The Worker did not perform these services for others and could not incur or realize an economic loss or financial risk beyond the normal loss of salary. The Firm represented the Worker to its clients as an employee. The Worker was required to contact the Firm's business office manager in case of problems or

complaints who was responsible for their resolution. The relationship could be terminated by either party without incurring liability or penalty.

The Worker received work assignments from a supervisor who determined the methods by which the services were performed. The Worker was required to attend monthly staff meetings and could not hire substitutes or helpers. The Worker was required to submit monthly narratives of activities and the Worker had to have the Firm's approval before accepting other jobs.

The information provided indicates that the services provided by the Worker were the same as those provided by the Firm's employees and that the Worker was considered a part of the office's staff. The information provided also indicates that the Firm evaluated the Worker's performance under its employee performance appraisal system.

Section 3121(d)(2) of the Internal Revenue Code (the Code) defines "employee" as any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

The question of whether an individual is an employee under the common law rules or an independent contractor is one of fact to be determined upon consideration of the facts and the application of the law and regulations in a particular case. Guidance for determining the existence of that status is found in two substantially similar sections of the applicable Employment Tax Regulations: section 31.3121(d)-1 relating to the Federal Insurance Contributions Act (FICA), and section 31.3401(c)-1 relating to federal income tax withholding.

Section 31.3121(d)-1(c)(2) of the regulations provides that generally, the relationship of employer-employee exists when the person for whom the services are performed has the right to direct and control 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. It is not necessary that the employer actually direct or control the manner in which the services are performed, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, it is of no consequence that the employee is designated as partner, coadventurer, agent, or independent contractor or the like.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or autonomy must be considered. In doing so, one must examine the relationship of the worker and the business. Relevant facts generally fall into three categories: (1) behavioral controls, (2) financial controls, and (3) the relationship of the parties.

Behavioral controls are evidenced by facts which illustrate whether the service recipient has a right to direct or control how the worker performs the specific tasks for which he or she is hired. Facts which illustrate whether there is a right to control how a worker performs a task include the provision of training or instruction.

Financial controls are evidenced by facts which illustrate whether the service recipient has a right to direct or control the financial aspects of the worker's activities. These factors include whether a worker has made a significant investment, has unreimbursed expenses, and makes services available to the relevant market; the method of payment; and the opportunity for profit or loss.

The relationship of the parties is generally evidenced by the parties' agreements and actions with respect to each other, including facts which show not only how they perceive their own relationship but also how they represent their relationship to others. Facts which illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts, the provision of or lack of employee benefits, the right of the parties to terminate the relationship, the permanency of the relationship, and whether the services performed are part of the service recipient's regular business activities.

Based on the information submitted, it is determined that the services performed by the Worker were sufficiently subject to the direction and control by the Firm to establish an employer-employee relationship. Accordingly, it is held that the Worker was an employee of the Firm and amounts paid for services provided were wages, subject to federal employment taxes and income tax withholding.

Section 3306(c)(6) of the Code, pertaining to the FUTA, provides that service performed in the employ of the United States Government are excepted from the definition of employment.

This ruling is applicable to any individuals engaged by the Firm under similar circumstances. The Firm is responsible for advising all of the affected workers of the results of this ruling.

This ruling is directed only to the taxpayer(s) to whom it is addressed. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent

Sincerely,

WILL E. MCLEOD
Chief, Employment Tax Branch 1
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure:
Copy of ruling letter for 6110 purposes

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