

Publication 3953:

Questions and Answers About Tax Court Proceedings for Determination of Employment Status Under I.R.C. § 7436



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Introduction

In this publication, the Internal Revenue Service ("Service") provides you with general information that may be helpful when you receive a Notice of Determination of Worker Classification ("notice of determination"). If you wish to discuss your particular situation with someone at the Service, call the person whose name and telephone number appear on the first page of the notice of determination. You may also address questions about all aspects of the Tax Court's proceedings to the court at the following address:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

Please note that contacting either the Service or the Tax Court does not extend the deadline by which you must file a Tax Court petition (if you choose to file one). (For more information on this, see Question 5 "When is the deadline for filing a Tax Court petition for determination of employment status?".)

1. What is a notice of determination of worker classification?

The Notice of Determination of Worker Classification is your legal notice that you may begin a proceeding for determination of employment status in the United States Tax Court. The notice of determination provides you with the **right** to go to Tax Court, but you may **choose not** to do so. (See question 9, "What happens if you decide not to file a Tax Court petition?")

The date on which the notice of determination is mailed by certified or registered mail also begins the time period during which you may file a petition in Tax Court asking that court to redetermine some or all of the Internal Revenue Service's three determinations described in the next section.

2. What are the three "determinations" made by the Internal Revenue Service before a notice of determination of worker classification is issued?

After an employment tax audit is completed, the Service makes the following three determinations before a notice of determination is issued.

WORKER CLASSIFICATION. The Service has determined that one or more individuals who provide services to you should be legally classified as your employees.

SECTION 530 TREATMENT. Generally, section 530(a) provides your business with relief from federal employment tax obligations if the following three

requirements are met: (1) you timely filed all returns that are consistent with how you classified the worker(s); (2) you have not treated the worker(s), or any worker holding a substantially similar position, as an employee at any time after December 31, 1977; and (3) you had a reasonable basis for not classifying the worker(s) as an employee.

The Service has determined that you are not entitled to relief from employment tax under the treatment of section 530(a) of the Revenue Act of 1978.

AMOUNT OF EMPLOYMENT TAX. The Service has determined the amount of additional employment tax, additions to tax, and penalties that results from the other two determinations. "Employment tax" includes tax imposed under Federal Insurance Contributions Act (FICA) (both the Old Age, Survivors, Disability Insurance (OASDI) portion of FICA and the Hospital Insurance (HI) portion of FICA, commonly called the "social security" and the "medicare" portions of FICA), the Federal Unemployment Tax Act (FUTA), the Railroad Retirement Tax Act (RRTA), and federal income tax withholding (ITW).

3. What is the proceeding for determination of employment status?

Once you have received a notice of determination, you may, within a period of time established by law, begin a proceeding for the determination of employment status by filing a petition in the United States Tax Court. In that proceeding, you ask the Tax Court to make its independent determinations whether the Service was correct when it made the three determinations described in question 2. In making its decision, the Tax Court takes a fresh look at the issues, so that you must produce evidence for the court to consider, even if you previously provided it to the Service during the audit.

4. Who may file a petition for determination of employment status?

You may file a petition for determination of employment status only if the Service issued you a notice of determination. The Service issues notices of determination to the person(s) for whom services were performed by the workers the Service is reclassifying as employees.

Generally, separate notices are sent to husbands and wives who file a joint return. If the notice of determination is addressed to both husband and wife, and both want to petition the Tax Court, either (1) both must sign and file one petition or (2) each must file a separate, signed petition.

5. When is the deadline for filing a Tax Court petition for determination of employment status?

The time you have to file a petition with the Tax Court is set by law and cannot be extended or suspended. Thus, contacting the Service or the Tax Court for more information, or receiving other correspondence from the Service, will not change the period for filing a petition with the Tax Court.

Generally, you must file the petition with the Tax Court before the 91st day after the date the notice of determination was mailed by certified or registered mail. For special rules governing how a bankruptcy proceeding affects the deadline, see question 11, "What effect do bankruptcy proceedings have on the Tax Court proceedings?"

The petition will be considered timely filed if it is filed by the date indicated on the first page of the notice of determination under the heading, "Last Day to File a Petition With the United States Tax Court." The petition is considered timely filed if the postmark date (either by the U.S. Postal Service or a designated private delivery service) falls within the period described above for filing a petition.

6. How do you file a Tax Court petition for determination of employment status?

You can get a copy of the rules for filing a petition for determination of employment status by writing to the address below.

United States Tax Court
400 Second Street, NW
Washington, DC 20217

You should write promptly if you intend to file a petition with the Tax Court.

You may also obtain information about filing the petition and the rules of the Tax Court from the Tax Court's website: www.ustaxcourt.gov.

To file the petition, timely send the completed petition, a copy of the notice of determination, and a copy of all statements and/or schedules you received with the notice of determination (but not this publication) to the Tax Court at the above address.

7. Who may represent you in the Tax Court proceedings?

You may be represented by anyone admitted to practice before the Tax Court. In addition, if you are an individual, you may represent yourself before the Tax Court. If you are a corporation or unincorporated association, you may be represented by an authorized officer of the corporation or by an authorized member

of the association. If you are an estate or trust, you may be represented by your fiduciary.

8. Is an election to use the Tax Court's simplified "small case procedures" available in a proceeding for determination of employment status?

Yes. The Tax Court has simplified "small case procedures" that you may elect for your case. In a proceeding for determination of employment status, you may elect those simplified procedures when the amount in dispute (including tax, additions to tax, and penalties) is \$50,000 or less for each calendar quarter involved. The Service also has the right to oppose the election.

You can get more information about the simplified procedures and how that election affects your appeal rights on the Tax Court's website at www.ustaxcourt.gov, or by writing to the Tax Court at:

United States Tax Court
400 Second Street, NW
Washington, DC 20217

You should write promptly if you intend to file a petition with the Tax Court.

9. What happens if you decide not to file a Tax Court petition?

If you decide not to file a petition with the Tax Court, you may wish to sign the waiver form (Form 2504-WC) enclosed with the notice of determination and return it to the Service at the IRS address on the top of the first page of the notice of determination. This will permit the Service to assess the proposed assessment quickly and can help limit the accumulation of interest.

If you decide not to sign and return the waiver, and you do not file a petition with the Tax Court within the time limit, the law requires the Service to assess the employment tax, additions to tax, and/or penalties, plus the interest required by law, and bill you for the assessment after 90 days from the date of the notice of determination.

If you do not file a Tax Court petition within the allotted time, you still may seek judicial review of the Service's worker classification and section 530 determinations and the proper amount of employment tax under such determinations by filing a refund suit in district court or in the Court of Federal Claims. Please note that before a refund suit can be filed, you must pay to the IRS the amount of employment tax that relates to one worker for one tax period and file a claim for refund with the IRS. If the claim for refund is denied (or the IRS does not respond to the refund claim for six months), you may file a refund suit in district court or the United States Court of Federal Claims and challenge the employment tax assessment.

10. What is your liability for interest?

By law, interest accrues on any underpayment of tax that is not timely paid. Interest accrues on the underpayment of tax, additions to tax, penalties, and accrued interest.

If you are a C-corporation and you have an underpayment of \$10,000 or more, section 6621(c) of the Internal Revenue Code requires that the Service charge you an interest rate two percent higher than the normal rate.

11. What effect do bankruptcy proceedings have on the Tax Court proceedings?

BANKRUPTCY PROCEEDINGS BEGUN BEFORE NOTICE OF DETERMINATION IS ISSUED. If you are in bankruptcy and the automatic stay under Bankruptcy Code section 362(a) is in effect as of the date of the notice of determination, you are prohibited from filing a petition with the Tax Court while the automatic stay is in effect. If you nevertheless file a Tax Court petition while the automatic stay is in effect, the Tax Court petition will be completely void. You may ask the Bankruptcy Court to lift the stay so you can file a petition with the Tax Court, or, once the automatic stay is no longer in effect by operation of law, you may then file a Tax Court petition. Once the automatic stay is lifted by the Bankruptcy Court or terminated by operation of law, you must calculate the deadline for filing the Tax Court petition as follows: the petition must be filed before the 151st day after the date the automatic stay is terminated. We suggest that you file your Tax Court petition as soon as possible after the Bankruptcy Court lifts the automatic stay or the automatic stay is no longer in effect by operation of law.

BANKRUPTCY PROCEEDINGS BEGUN AFTER NOTICE OF DETERMINATION IS ISSUED BUT BEFORE TAX COURT PETITION IS FILED. If you file a bankruptcy petition after the date of the notice of determination but before filing a Tax Court petition, you are precluded from filing a Tax Court petition while the automatic stay under Bankruptcy Code section 362(a) is in place. If you nevertheless file a Tax Court petition while the automatic stay is in effect, the Tax Court petition will be completely void. Once the automatic stay is lifted by the Bankruptcy Court or terminated by operation of law, you must calculate the deadline for filing a Tax Court petition as follows:

the period for filing a Tax Court petition (before the 151st day) after the date the automatic stay is terminated

is reduced by

the number of days between the date of the notice of determination and the date the bankruptcy petition was filed.

Example. The notice of determination is sent to you by certified mail on May 1, 2001. You file a bankruptcy petition in the Bankruptcy Court on June 1, 2001. You ask the Bankruptcy Court to lift the automatic stay. On June 18, 2001, the Bankruptcy Court lifts the automatic stay so that you can file a petition. When would be the last day by which you could timely file your petition for redetermination of employment status?

First, you must calculate the 151st day after the date the automatic stay is lifted. The 151st day after June 18, 2001, is November 16, 2001.

Then, from that date, you must reduce the number of days that elapsed from the date of the notice of determination to the date you filed your bankruptcy petition. Thirty-one days elapsed between May 1, 2001 and June 1, 2001. Thus, the deadline for filing the Tax Court petition would be thirty-one days before November 16, 2001. That date would be October 16, 2001. So, the Tax Court petition would have to be filed **before** October 16, 2001, which means that the petition must be filed **no later than** October 15, 2001.

We suggest that you file your Tax Court petition as soon as possible after the Bankruptcy Court lifts the automatic stay or the automatic stay is no longer in effect by operation of law.

12. How do you contact a Taxpayer Advocate?

If you have questions/concerns about the Notice of Determination of Worker Classification, first contact the person whose name and telephone number appear at the top of the first page of the notice. This person can directly access your tax information and help you get answers.

Do you want assistance by a Taxpayer Advocate?

This assistance **is not** a substitute for established IRS procedures, formal Appeals processes, etc. The Taxpayer Advocate **cannot** reverse legal or technically correct tax determinations, nor extend the time allowed by law to file a petition in the United States Tax Court. However, the Taxpayer Advocate **can** give your tax matter proper and prompt handling when unresolved through normal channels. You can call toll-free 1-877-777-4778 and ask for Taxpayer Advocate assistance, or call the telephone number of the Taxpayer Advocate for the IRS office listed below that issued the Notice of Determination of Worker Classification.

Taxpayer Advocate Offices:

ALABAMA

Birmingham Office

Taxpayer Advocate
801 Tom Martin Dr.
Birmingham, AL 35211
(205) 912-5631

ALASKA

Anchorage Office

Taxpayer Advocate
949 East 36th Ave., Stop A-405
Anchorage, AK 99508
(907) 271-6877

ARIZONA

Phoenix Office

Taxpayer Advocate
210 E. Earll Dr., Stop 1005-PHX
Phoenix, AZ 85012
(602) 207-8240

ARKANSAS

Little Rock Office

Taxpayer Advocate
700 West Capitol St., Stop 1005-LIT
Little Rock, AR 72201
(501) 324-6269

CALIFORNIA

Laguna Niguel Office

Taxpayer Advocate
24000 Avila Road-Room 3362
Laguna Niguel, CA 92677
(949) 389-4804

Los Angeles Office

Taxpayer Advocate
300 N. Los Angeles St.
Stop 1005-LA Room 5119
Los Angeles, CA 90012
(213) 576-3140

Oakland Office

Taxpayer Advocate
1301 Clay St. #1540S
Oakland, CA 94612
(510) 637-2703

Sacramento Office

Taxpayer Advocate
4330 Watt Ave.
N. Highlands, CA 95660
(916) 974-5007

San Jose Office

Taxpayer Advocate
55 S. Market St., Stop HQ000-4
San Jose, CA 95113
(408) 817-6850

COLORADO

Denver Office

Taxpayer Advocate
600 17th St., Stop 1005-DEN
Denver, CO 80202-2490
(303) 446-1012

CONNECTICUT

Hartford Office

Taxpayer Advocate
135 High St., Stop 219
Hartford, CT 06103
(860) 756-4555

DELAWARE

Wilmington Office

Taxpayer Advocate
409 Silverside Rd.
Wilmington, DE 19809
(302) 791-4502

DISTRICT OF COLUMBIA

Baltimore Office

Taxpayer Advocate
31 Hopkins Plaza
Baltimore, MD 21201
(410) 962-2082

FLORIDA

Ft. Lauderdale Office

Taxpayer Advocate
7850 SW 6th Court
Plantation, FL 33324
(954) 423-7677

Jacksonville Office

Taxpayer Advocate
841 Prudential Dr., Suite 100
Stop:TA:SE/INT:JAX
Jacksonville, FL 32207
(904) 665-1000

GEORGIA

Atlanta Office

Taxpayer Advocate
401 W. Peachtree St., NW,
Summit Building
Stop 202-D
Atlanta, GA 30308
(404) 338-8099

HAWAII

Honolulu Office

Taxpayer Advocate
Stop H-405
300 Ala Moana Blvd., #50089
Honolulu, HI 96850
(808) 539-2870

Taxpayer Advocate Offices (cont'd):

IDAHO

Boise Office

Taxpayer Advocate
550 West Fort St., Box 041
Boise, ID 83724
(208) 334-1324

ILLINOIS

Chicago Office

Taxpayer Advocate
230 S. Dearborn St.
Stop 1005-CHI
Chicago, IL 60604
(312) 566-3800

Springfield Office

Taxpayer Advocate
320 W. Washington St.
Stop 1005-SPD
Springfield, IL 62701
(217) 527-6382

INDIANA

Indianapolis Office

Taxpayer Advocate
575 N. Pennsylvania St., Stop TA770
Indianapolis, IN 46204
(317) 226-6332

IOWA

Des Moines Office

Taxpayer Advocate
210 Walnut St., Stop 1005-DSM
Des Moines, IA 50309
(515) 284-4780

KANSAS

Wichita Office

Taxpayer Advocate
271 W. 3rd St., North
Stop 1005-WIC
Wichita, KS 67202
(316) 352-7506

KENTUCKY

Louisville Office

Taxpayer Advocate
600 Dr. MLK Jr. Place
Federal Building-Room 622
Louisville, KY 40202
(502) 582-6030

LOUISIANA

New Orleans Office

Taxpayer Advocate
600 South Maestri Pl., Stop 2
New Orleans, LA 70130
(504) 558-3001

MAINE

Augusta Office

Taxpayer Advocate
68 Sewall St., Room 313
Augusta, ME 04330
(207) 622-8528

MARYLAND

Baltimore Office

Taxpayer Advocate
31 Hopkins Plaza
Baltimore, MD 21201
(410) 962-2082

MASSACHUSETTS

Boston Office

Taxpayer Advocate
25 New Sudbury St.
Boston, MA 02203
(617) 316-2690

MICHIGAN

Detroit Office

Taxpayer Advocate
McNamara Federal Building
477 Michigan Ave.-Room 1745
Detroit, MI 48226
(313) 628-3670

MINNESOTA

St. Paul Office

Taxpayer Advocate
Stop 1005-STP
316 North Robert St.
St. Paul, MN 55101
(651) 312-7999

MISSISSIPPI

Jackson Office

Taxpayer Advocate
100 W. Capitol St., Stop JK31
Jackson, MS 39269
(601) 292-4800

MISSOURI

St. Louis Office

Taxpayer Advocate
Robert A. Young Building
1222 Spruce St., Stop 1005-STL
St. Louis, MO 63103
(314) 612-4610

Taxpayer Advocate Offices (cont'd):

MONTANA

Helena Office

Taxpayer Advocate
Federal Building
301 S. Park, Stop 1005-HEL
Helena, MT 59626-0023
(406) 441-1022

NEBRASKA

Omaha Office

Taxpayer Advocate
1313 Farnam St., Stop 1005-OMA
Omaha, NE 68102
(402) 221-4181

NEVADA

Las Vegas Office

Taxpayer Advocate
4750 West Oakey Blvd.
Stop 1005-LVG
Las Vegas, NV 89102
(702) 455-1241

NEW HAMPSHIRE

Portsmouth Office

Taxpayer Advocate
Federal Office Building
80 Daniel St.
Portsmouth, NH 03801
(603) 433-0571

NEW JERSEY

Springfield Office

Taxpayer Advocate
955 S. Springfield Ave.
Springfield, NJ 07081
(973) 921-4043

NEW MEXICO

Albuquerque Office

Taxpayer Advocate
5338 Montgomery Blvd. N.E.
Stop 1005-ALB
Albuquerque, NM 87109
(505) 837-5505

NEW YORK

Albany Office

Taxpayer Advocate
Leo O'Brien Federal Building
1 Clinton Square
Albany, NY 12207
(518) 427-5413

Brooklyn Office

Taxpayer Advocate
10 Metro Tech Center
625 Fulton St.
Brooklyn, NY 11201
(718) 488-2080

Buffalo Office

Taxpayer Advocate
201 Como Park Blvd.
Buffalo, NY 14227
(716) 686-4850

Manhattan Office

Taxpayer Advocate
290 Broadway-7th Floor
New York, NY 10007
(212) 436-1011

NORTH CAROLINA

Greensboro Office

Taxpayer Advocate
320 Federal Place, Room 125
Greensboro, NC 27401
(336) 378-2180

NORTH DAKOTA

Fargo Office

Taxpayer Advocate
657 2nd Ave., N. Stop 1005-FAR
Fargo, ND 58102
(701) 239-5141

OHIO

Cincinnati Office

Taxpayer Advocate
550 Main St., Room 3530
Cincinnati, OH 45202
(513) 263-3260

Cleveland Office

Taxpayer Advocate
1240 E. Ninth St., Room 423
Cleveland, OH 44199
(216) 522-7134

OKLAHOMA

Oklahoma City Office

Taxpayer Advocate
55 N. Robinson, Stop 1005-OKC
Oklahoma City, OK 73102
(405) 297-4055

OREGON

Portland Office

Taxpayer Advocate
1220 S.W. 3rd Ave., Stop O-405
Portland, OR 97204
(503) 326-2333

Taxpayer Advocate Offices (cont'd):

PENNSYLVANIA

Philadelphia Office

Taxpayer Advocate
600 Arch St.
Philadelphia, PA 19106
(215) 861-1304

Pittsburgh Office

Taxpayer Advocate
1000 Liberty Ave.
Pittsburgh, PA 15222
(412) 395-5987

RHODE ISLAND

Providence Office

Taxpayer Advocate
380 Westminster St.
Providence, RI 02903
(401) 525-4200

SOUTH CAROLINA

Columbia Office

Taxpayer Advocate
1835 Assembly St.
MDP 03
Columbia, SC 29201
(803) 253-3029

SOUTH DAKOTA

Aberdeen Office

Taxpayer Advocate
115 4th Ave., Southeast
Stop 1005-ABE
Aberdeen, SD 57401
(605) 226-7248

TENNESSEE

Nashville Office

Taxpayer Advocate
801 Broadway, Stop 22
Nashville, TN 37203
(615) 250-5000

TEXAS

Austin Office

Taxpayer Advocate
300 E. 8th St., Stop 1005-AUS
Austin, TX 78701
(512) 499-5875

Dallas Office

Taxpayer Advocate
1114 Commerce St.
10th Floor MC1005
Dallas, TX 75242
(214) 767-1289

Houston Office

Taxpayer Advocate
1919 Smith St., Stop 1005-HOU
Houston, TX 77002
(713) 209-3660

UTAH

Salt Lake City Office

Taxpayer Advocate
50 South 200 East, Stop 1005-SLC
Salt Lake City, UT 84111
(801) 799-6958

VERMONT

Burlington Office

Taxpayer Advocate
Courthouse Plaza
199 Main St.
Burlington, VT 05401
(802) 860-2089

VIRGINIA

Richmond Office

Taxpayer Advocate
400 North 8th St.
Richmond, VA 23240
(804) 916-3501

WASHINGTON

Seattle Office

Taxpayer Advocate
915 2nd Ave., Stop W-405
Seattle, WA 98174
(206) 220-6037

WEST VIRGINIA

Parkersburg Office

Taxpayer Advocate
425 Juliana St.
Parkersburg, WV 26101
(304) 420-6616

WISCONSIN

Milwaukee Office

Taxpayer Advocate
310 West Wisconsin Ave.
Stop 1005-MIL
Milwaukee, WI 53203
(414) 297-3046

WYOMING

Cheyenne Office

Taxpayer Advocate
5353 Yellowstone Rd.
Stop 1005-CHE
Cheyenne, WY 82009
(307) 633-0800

**TAXPAYER LIVING ABROAD OR
IN U.S. TERRITORIES**

**A/C International
Taxpayer Advocate**

7 Tabonuco Street
San Patricio Office Building
Room 200
Guaynabo, Puerto Rico 00966
or
P.O. Box 193479
San Juan, Puerto Rico 00919-3479
(787) 622-8940 English
(787) 622-8930 Spanish

CENTERS

Andover Center

Taxpayer Advocate
P.O. Box 9055, Stop 121
Andover, MA 01810-9055
(978) 474-5549

Atlanta Center

Taxpayer Advocate
P.O. Box 48-549, Stop 29A
Doraville, GA 30362
(770) 936-4500

Austin Center

Taxpayer Advocate
P.O. Box 934, Stop 1005-AUSC
Austin, TX 78767
(512) 460-8300

Brookhaven Center

Taxpayer Advocate
P.O. Box 960, Stop 102
Holtsville, NY 11742
(631) 654-6686

Cincinnati Center

Taxpayer Advocate
P.O. Box 1235, Stop 11-G
Cincinnati, OH 45201-1235
(859) 292-5316

Fresno Center

Taxpayer Advocate
P.O. Box 12161, Stop 01
Fresno, CA 93776
(559) 443-7582

Kansas City Center

Taxpayer Advocate
P.O. Box 24551
Stop 1005-Annex 10
Kansas City, MO 64131
(816) 926-2493

Memphis Center

Taxpayer Advocate
P.O. Box 30309 AMF, Stop 13M
Memphis, TN 38130
(901) 395-1900

Ogden Center

Taxpayer Advocate
P.O. Box 1640
Stop 1005
Ogden, UT 84402
(801) 620-7168

Philadelphia Center

Taxpayer Advocate
P.O. Box 16053, DP #1300
Philadelphia, PA 19114
(215) 516-2499