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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:
CC:EBEO:6 - PLR-116834-98
Date:
FEB 23 1999

Key

worker =

firm =

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 she provided to the firm. 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.

According to the information submitted, the firm is a federal agency that selects and administers scholarships to undergraduate college students. The worker was engaged to provide clerical work pursuant to a written agreement. She performed her services from June 12, 1996 through December 13, 1996.

The worker's services were performed at the firm's facilities, under its schedule and hours of operation. The firm provided all the equipment and supplies that were necessary to perform her services. The worker's duties included opening and sorting mail, preparing correspondence, filing, and answering the telephone. Her remuneration was based on an hourly rate and the firm reported her earnings to the Internal Revenue Service on Form 1099.

The worker states that she was supervised and assigned work by the firm's administrative officer, who had the right to change the methods used by the worker in the performance of her services. She was given training and instructions by the firm. It was understood that the worker was to perform her services personally. The worker states that the firm represented her to the public as its employee and that her services were provided under the firm's business name. Either the firm or the worker could terminate the agreement for services at any time without incurring a liability.

The worker indicates that she did not perform similar services for others and did not maintain her own office or represent herself to the public as being in the business of providing the same or similar services. The worker also indicates that she did not have a financial investment in a business related to the services performed. The worker further indicates that she did not incur a loss or realize a profit in the performance of her services for the firm.

Section 3121(d)(2) of the Internal Revenue 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. Guides for determining the existence of that status are found in three substantially similar sections of the Employment Tax Regulations, namely, sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1, relating to the FICA, the FUTA, and federal income tax withholding respectively.

Section 31.3121(d)-1(c)(2) of the regulations provides that generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct 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. That is, an employee is subject to the will and control of the employer not only as to what shall be done but as to how is shall be done. In this connection, 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. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished and not as to the means and methods for accomplishing the result, he or she is an independent contractor.

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 parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, the designation of the employee as partner, coadventurer, agent, or independent contractor must be disregarded.

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: behavioral controls, financial controls, and 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 include significant investment, unreimbursed expenses, making 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 examining the parties' agreements and actions with respect to each other, paying close attention to those 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.

We have carefully considered the information submitted in this case and, in view of the facts discussed above, we conclude that the firm had the right and did, in fact, exercise the degree of direction and control necessary to establish an employer-employee relationship. Accordingly, we conclude that the worker was an employee of the firm and amounts paid to her for services provided are 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 letter does not constitute a Notice of Determination Concerning Worker Classification Under Section 7436 of the Code.

This ruling is applicable to any other individuals engaged by the firm under similar circumstances. This ruling is directed only to the taxpayer to whom it is addressed. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

HARRY BEKER
Chief, Branch 6
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

Enclosure:
Copy of this letter
Copy for section 6110 purposes