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Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Refer Reply To:
CC:EBEO:6 - PLR-121820-98
Date:
JAN 28 1999

Key:

Firm =

Worker =

Dear Sir or Madam:

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 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. The Worker was engaged as an office automation clerk under a written personal service contract for the period September 20, 1993 through April 30, 1994.

The Worker states that she was engaged by the Firm as a "contract student", to provide services during the college term. Her duties included general office work, typing, and answering the telephone. Her services were performed at the Firm's facilities, under its schedule and hours of operation.

The Worker also states that she was supervised and assigned work by the Firm's representative who had the right to change the methods used by her in the performance of her services. She was given training by the Firm in how to use computer software and in general office duties on an as-needed basis. The Worker

states that she reported to the Firm's representative on a daily basis, in person, to communicate the status of assignments. It was understood by both parties that the Worker's services were to be performed personally. All tools, equipment, supplies, and materials needed by her in the performance of services were furnished by the Firm.

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 could not incur a loss or realize a profit in the performance of her services for the Firm.

The Worker maintains that the Firm represented her to the public as it's employee and that her services were provided under the Firm's business name. Both the Firm and Worker could terminate the relationship without incurring liability.

The Worker states that she was paid on an hourly basis, and the Firm reported those amounts to the Internal Revenue Service on Form 1099.

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

The question of whether an individual is an independent contractor or an employee is one of fact to be determined upon consideration of the facts and 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 Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding on wages at source, 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 results to be accomplished by the work, but also as to the details and means by which the 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 also as to how it shall be done. In this connection, it is not necessary that the employer actually direct or control the manner in which 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.

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 relationship of the parties.

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 a partner, coadventurer, agent, or independent contractor must be disregarded.

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 Internal Revenue Code.

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 yours,

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

Enclosure:
Copy of ruling letter for 6110 purposes