Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Number: **200324043**
Release Date: 6/13/2003
Index Number: 3121.04-01, 3306.05-00, 3401.04-02

Person to Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:ET1-PLR-157284-02
Date:
March 10, 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 January 1997, to December 1999. 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 his services as a teacher/instructor. According to the Firm, the Worker was initially hired as a contract worker; however, a year later he was treated as an employee. The Worker taught seven classes during an eight-hour work day. The Worker performed the services on premises of the Firm. The Worker was required to provide the services personally. The Worker did not perform these services for others. The Firm represented the Worker to its clients as an employee.

The Firm provided the Worker with training and/or instruction through educational training sessions. The Worker was required to attend weekly staff meetings with the principal and could be reprimanded for not attending such meetings. If substitutes or helpers were needed, the Firm hired and paid the substitutes or helpers. If problems or complaints arose, the Worker was required to contact his immediate supervisor, the principal, who was the person responsible for their resolution. While the Firm claimed that no reports were required of the Worker, the Worker indicated that he was required to report student attendance and student progress reports to the Firm. All educational

supplies, equipment, materials and property needed for the Worker to perform his services were provided by the Firm. The Worker was not required to incur any expenses in the performance of his services for the Firm. According to the Firm, the Worker was entitled to annual and sick leave. The relationship between the Worker and the Firm could be terminated by either party without incurring liability or penalty.

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 to him 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