

INTERNAL REVENUE SERVICE  
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

October 23, 2006

Third Party Communication: None  
Date of Communication: Not Applicable

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CASE-MIS No.: TAM-113722-06

Supervisory Tax Examining Technician

Taxpayer's Name:  
Taxpayer's Address:

Taxpayer's Identification No

Date of Conference: No Conference Held

LEGEND:

Entity A =  
Entity X =

ISSUE(S):

Whether Entity A, a 501(c)(3) corporation and a sheltered workshop, is granted relief under IRC § 7805(b) from the retroactive effect of the revocation of a determination letter.

CONCLUSION(S):

Yes, Entity A is granted relief from the retroactive effect of the revocation of the determination letter. This relief only applies to individuals engaged by Entity A under circumstances similar to the facts under consideration in the original determination letter. The revocation of the determination letter will go into effect as of January 1, 2006. Entity A must treat those individuals who were covered under the original determination letter as employees as of January 1, 2006.

**FACTS:**

Entity A is a sheltered workshop formerly known as Entity X. Entity A received an SS-8 determination in March 1993 (when it was Entity X). The March 1993 determination letter concluded that the exclusion from employee status set forth in Revenue Ruling 65-165, 1965-1 C.B. 446, applied to certain workers performing services for Entity X. Thus, Entity X was not required to withhold, report, or pay employment taxes related to these workers.

In January 2005, Entity A requested that the Service reissue the 1993 letter to its new corporate name. The Service did not issue a new letter, and in fact, revoked the 1993 determination.

Entity A requested in June 2005 that the Service limit the retroactive effect of the revocation letter, under IRC § 7805(b). Further, Entity A requested that the change of worker status not go into effect until July 1, 2005.

**LAW AND ANALYSIS:**

Code Section 7805(b) and Treasury Regulation Section 301.7805-1(b) provide that the Service may prescribe the extent to which an administrative decision shall be applied without retroactive effect. To administer the statute and regulations, the Service has published procedures for taxpayers to request relief from the retroactive effect of a decision. Rev. Proc. 2006-1, 2006-1 I.R.B. 1, § 13.02(2) (Jan. 9, 2006), provides that the Service may grant relief from the retroactive effect of a revocation of a determination letter. The taxpayer may request such relief by asking the field office to seek technical advice from the National Office. See Rev. Proc. 2006-2, 2006-1 I.R.B. 89, § 16.03 (Jan. 9, 2006). A taxpayer's request must be in the form of and meet the general requirements for a technical advice request. *Id.* Here, Entity A's June 2005 letter fulfills those requirements. Furthermore, the Service revoked the determination letter after it revised its approach to the application of its published guidance, not after an examination or other event that would cause the Service to question whether the taxpayer represented the facts accurately with respect to the individuals covered by the 1993 determination.

The Service hereby grants Entity A's request for limitation on the retroactive effect of the determination revocation. Entity A should begin to treat the affected workers as employees of the organization beginning on Jan 1, 2006. However, Entity A may wish to request a new determination consistent with the 2005 revocation of the 1993 determination to address the status of participants in its present programs.

Note that the 1993 determination only applied to "individuals engaged by the firm under similar circumstances." Accordingly, the limitation on the retroactive effect of the revocation does not in any way affect the application of employment taxes with respect to individuals performing services for Entity A under different circumstances.

**CAVEAT(S):**

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.