Internal Revenue Service

Number: **200835025**
Release Date: 8/29/2008

Index Number: 3121.04-01, 3306.05-00, 3401.04-02

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable
Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:ET1
PLR-152008-07
Date:
May 21, 2008

Key:

Firm =

Worker =

X =

Y =

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 he 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.

The information provided by both the Firm and the Worker is in substantial agreement. According to the facts made available to us, the Firm is a federal agency that provides health care in a hospital setting. The Worker provided services as a Medical Technologist at the Firm's location pursuant to successive service orders during the period X. Previously, the worker performed the same services for the Firm during the earlier period Y, but was treated as an employee for employment tax purposes.

As a Medical Technologist, the Worker performed clinical laboratory testing which would assist physicians in their diagnosis and prognosis. He received a complete orientation to each laboratory department by the Firm and was also given a competency assessment. The Worker's services were under the review of a laboratory supervisor. The supervisor assigned the Worker to a specific department each day for which he was scheduled to work and the Worker followed procedures outlined in the department's procedure manual. The Worker states that he was required to attend all staff meetings and was also required to submit all lab reports.

The Worker provided his services personally and did not engage or pay helpers to assist him. The Worker did not perform similar services for others and did not advertise his services. Both the Firm and the Worker indicate that either party could terminate the agreement for services at any time without incurring liability, although the Firm stated that termination also required two-week notice.[1]

The Firm provided all the supplies, equipment, materials and property needed by the Worker in the performance of his services. The Worker did not incur any expenses performing his services for the Firm. The Worker did not receive benefits from the Firm, such as paid leave or holidays. The Worker was required to record his time on a sign in sheet and would then submit an invoice to the Firm. The Worker was paid an hourly rate for his services.

The Worker states the Firm represented the Worker to customers as an employee and that there were no substantive differences between the Worker and other workers performing the same services that the Firm classified as employees. The Firm states it represented the Worker as a contractor to its customers, but the Firm agrees with the Worker that the services performed by the Worker during period X were the same as

[1] The service orders attached general guidelines from the Federal Acquisition Regulations that permit the government, in event of contract nonperformance, to demand specific performance under the contract, adjust the contract price, pass any costs incurred by the government to perform the contract to the contractor, or terminate the contract. However, these regulations do not address the treatment of the worker for employment tax purposes and the specific response by the Worker and the Firm supervisor do not indicate that such general provisions had any relevance to the specific relationship.

those performed during the earlier period Y when the Worker was also treated as an employee.

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, co-adventurer, 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 control, (2) financial control, and (3) the relationship of the parties.

Behavioral control is 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 control is 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 are sufficiently subject to the direction and control of the Firm to establish an employer-employee relationship. The facts provided by the Firm and the Worker indicate that the Firm gave instructions and training, set the schedules and work demands, resolved problems and generally established the manner in which he performed his work. The Worker did not have a significant investment or opportunity for profit or loss. He was paid an hourly wage. The Firm provided all supplies and equipment. While some of the language in the service orders and the absence of any employee benefits may indicate an intent to establish an independent contractor relationship, the weight of the evidence regarding the actual facts of the relationship between the Firm and the Worker indicate the requisite level of control to establish a relationship of employee and employer.

Accordingly, it is held that the Worker was the Firm's employee during period X and that amounts paid to the Worker for services provided during such period X were wages, subject to FICA tax and federal 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.

The conclusions in this letter are applicable to any individuals engaged by the Firm under substantially 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,

Janine Cook
Chief, Employment Tax Branch 1
Division Counsel/Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosure:
Copy of ruling letter for 6110 purposes