DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

DEC 28 1998

CC:EBEO:2

UILC: 7436.01-03
7436.01-05

Number: **199919002**
Release Date: 5/14/1999

MEMORANDUM FOR DISTRICT COUNSEL

FROM: Assistant Chief Counsel
(Employee Benefits and Exempt Organizations) CC:EBEO

SUBJECT:

LEGEND:

Date 1	=
Date 2	=
Date 3	=
City, State	=
Paragraphs x	=
Paragraphs y	=

We are forwarding the attached Tax Court case legal file to you for assignment to an attorney in your office because the designated place for trial is City, State. The petition was served on the IRS Chief Counsel's office on Date 1.

On Date 2, the Service sent the taxpayer a "Notice of Determination Concerning Worker Classification Under Section 7436", advising the taxpayer that the Service had determined during the course of an employment tax audit that one or more individuals performing services for the taxpayer are to be legally classified as employees for purposes of the federal employment taxes under subtitle C of the Internal Revenue Code and that the taxpayer is not entitled to employment tax relief pursuant to section 530 of the Revenue Act of 1978 with respect to such individuals.

Taxpayer timely filed a petition for review of that determination with the Tax Court on Date 3. Accordingly, the Tax Court has jurisdiction over this case.

The jurisdiction of the Tax Court extends only to determining whether the workers at issue should be legally classified as employees, and whether the taxpayer is entitled to employment tax relief under section 530 of the Revenue Act of 1978. I.R.C. section 7436(a). A proceeding under I.R.C. section 7436 is not a deficiency proceeding, and the Service is not authorized to send a notice of deficiency with respect to employment taxes. See I.R.C. section 6212(a).

In paragraphs x of the petition, taxpayer petitions for a redetermination of the "deficiencies". In paragraphs y of the petition, taxpayer challenges the manner in which the proposed assessment of tax was calculated. The Tax Court does not have jurisdiction to determine the specific amounts of employment taxes owed, the manner in which the proposed assessment was calculated, or the applicability of additions to tax. Please file a motion to dismiss in part for lack of jurisdiction and a motion to strike the portions of the petition related to the amount of tax.

Please refer to Rules 290 through 295 of the Tax Court's Rules of Practice and Procedure for guidance in filing responsive pleadings.

Finally, because the Tax Court has yet to issue any reported decisions on proceedings under section 7436, you should coordinate all documents, (including the decision document, even if this case settles) filed with the Tax Court with the National Office (Employee Benefits and Exempt Organizations Division, Branch Two). The name of the branch two attorney assigned to the case appears in National Office Attorney field of Case Screen 2 of the TL-CATs computer system and she can be reached at 202-622-6040. When the case is assigned, your attorney may contact her to send you a sample motion and answer to assist you in litigating this case.

MARY OPPENHEIMER

By: ______________________
JERRY E. HOLMES
Chief, Branch 2, CC:EBEO:2

Attachments:
Legal file