

Internal Revenue Service

Department of the Treasury

Number: **200345013**
Release Date: 11/07/2003
Index Number: 3121.04-00

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:ET1-PLR117401-03

Date:

July 15, 2003

Dear _____ :

This is in reply to your request for a ruling to determine your federal employment tax status. You have filed this request in response to an Internal Revenue Service letter dated January 3, 2003, stating that your 1099-MISC income cannot be changed from Schedule C to wage income without a favorable SS-8 determination.

According to the information submitted, the _____ (firm) awarded a contract to you under its Loan Repayment Program. The contract obligates you to two years of full time clinical practice as a health professional from September 10, 2001 to September 9, 2003. Under the terms of the contract, the _____ is obligated to pay you a scheduled amount for your qualified outstanding undergraduate and/or graduate educational loans and tax assistance payment so long as you work in an approved loan repayment community site.

The _____ provided a list to you of approved sites. You applied, obtained and maintained a work position separately on your own in an approved site. The facts do not disclose any other connection you have with a federal agency besides working in the targeted area in order to receive student loan repayment monies. Under the terms of the contract you were paid \$34,750 for loan repayments in tax year 2001.

Section 3121(d)(2) of the Internal Revenue Code (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. 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 FICA, the FUTA, and federal income tax withholding 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 result to be accomplished by the work, but also as to the details and means by which that 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 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 the 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.

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

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 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 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 did not have the degree of direction and control necessary to establish an employer-employee relationship. Accordingly, we conclude that the worker is not an employee of the firm.

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.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

Will E. McLeod
Chief, Employment Tax Branch 1
Office of Division Counsel/
Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosures:

Copy of this letter

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