

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

Telephone Number:

Refer Reply To:

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Date:

April 10, 2001

Key:

Firm =

Worker =

Dear Sir or Madam:

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 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.

According to the information submitted, the Firm is a Federal agency. The Worker provides her services as a dental assistant under the direct supervision of a licensed dentist. All of the individuals who receive dental services are the Firm's clients. The services performed by the Worker include the planning and conducting of oral health education programs, providing chair side assistance in dental procedures, assisting in the scheduling of clients in the dental clinic and maintaining daily records relative to those clients served.

Both the Firm and the Worker state that the Worker is required to report to the Firm's representative on a daily basis, that the Firm provides all tools, equipment, supplies,

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and materials needed by the Worker in the performance of her services. Both state that the Worker's services must be performed personally, her hours of work are determined by the Firm and her services are provided at the Firm's location. Both also state that the Worker does not have a financial investment in a business related to the services performed and cannot incur a loss in the performance of those services for the Firm.

The Worker states that she receives instructions in dental assisting skills and that the staff dentist, a federal government employee, has the right to change the methods used by her to provide dental assistance services. The Worker also states that the staff dentist directs her in the performance of her services by changing the procedures under which her services are performed. She also states that her services cannot be performed without the presence of the staff dentist.

The Worker indicates that she does not advertise or maintain a business listing or represent herself to the public as being in business to perform the same or similar services. She also represents that she does not have her own office or shop. She also indicates that a license is not required to perform the services she provides to the Firm.

The Firm states that the Worker performs her services for a base year plus four optional years. The Firm also states that its primary function is not to provide dental care to its clients, however, it also states that providing such medical services on site is imperative for the safety of its operation.

Section 3121(d)(2) of the Internal Revenue Code provides that the term "employee" means any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of employee.

The question of whether an individual is an independent contractor or an employee is one of fact to be determined upon consideration of the facts and 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 Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and federal income tax withholding on wages at source, 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 results to be accomplished by the work, but also as to the details and means by which the 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 also 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 services are performed; it is sufficient if he or she has the right to do

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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.

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 relationship of the parties.

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 a partner, co-adventurer, agent, or independent contractor must be disregarded.

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 has the right and does in fact exercise the degree of direction and control necessary to establish an employer-employee relationship. Accordingly, we conclude that the Worker is an employee of the Firm and amounts paid to her for services provided are 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

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definition of employment.

This letter does not constitute a Notice of Determination Concerning Worker Classification Under Section 7436 of the Internal Revenue Code.

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 yours,

Michael A. Swim  
Chief, Employment Tax Branch 1  
Office of Division Counsel/ Associate  
Chief Counsel  
(Tax Exempt and Government Entities)

Enclosure:

Copy of ruling letter for 6110 purposes