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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EOEG:ET1
PLR-127127-04

Date:
September 30, 2004

Key:

Firm =

Worker =

X =

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 provided to a federal agency (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 provided services to the Firm as a research scientist for the period X under a Memorandum of Understanding (MOU). Under terms in the MOU the Worker agreed to

be governed by the rules and regulations of the Firm, including hours of work, conduct, dissemination of information, and use of facilities. Terms in the MOU also provide that the Firm agreed to provide such supervision, guidance, working facilities and supplies as deemed necessary for the project.

The information provided by both the Firm and the Worker is in substantial agreement. Both state that the Worker was given specific training and/or instruction, practical and theoretical, as they related to solving research problems. The Worker received work assignments directly from the Firm's representative (research leader) on a weekly or monthly basis. Both state that the methods by which the Worker's work assignments were performed were determined by the research leader; that the Worker was required to contact the research leader in case of problems or complaints who was responsible for the resolution of any problems that might arise; that the Worker's services were performed on the Firm's premises; that the Worker's services were provided on a full-time basis; and that the Worker was eligible for overtime pay. Both parties state that the Worker was required to attend regularly scheduled staff and laboratory meetings; to provide the services personally; and if a substitute was needed, they were hired and paid by the Firm.

Both parties indicate that the Firm provided all supplies, equipment, materials, and property needed by the Worker in the performance of services and that it reimbursed the Worker for travel expenses incurred on its behalf. Both indicate that there was no economic loss or financial risk that could be incurred by the Worker in the performance of services; that the remuneration for services was a salary; and that the Worker was eligible for paid vacation time.

The information provided indicates that the Worker was represented to the public by the Firm as a member of the staff.

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 were sufficiently subject to the direction and control by the Firm to establish an employer-employee relationship. Accordingly, it is held that the Worker was the Firm's employee for the period X and that amounts paid to the Worker for services provided were 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 definition of employment.

The conclusions in this letter are applicable to any individuals engaged by the Firm under similar circumstances. The Firm is responsible for advising all of the affected workers of the results of this ruling.

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