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Person To Contact: \_\_\_\_\_, ID No.

Telephone Number:

Refer Reply To:  
CC:TEGE:EOEG:ET1  
PLR-141939-06

Date:  
December 07, 2007

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 she provides 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. Information originally furnished by the Firm was submitted by the Worker's supervisor. However, a representative of your office has provided clarification to the original information provided by the Worker's supervisor. This ruling is based on all the information made available to us.

The Firm is a facility that provides outpatient health care to active duty and retired military service members and their dependents. Pursuant to a written contract, the Worker provides the Firm social work and case management services for those Firm patients in a certain age category. The Worker has been performing her services for the period X. The contract provides that the Worker is subject to daily supervision and control by Firm personnel. The Worker states that she receives training and instructions by the Firm, as directed by the written contract with respect to clinical duties. The Worker is required to participate in all training sessions and attends other called meetings. She is required to enter all patient medical records as a Firm clinic provider. The Firm generally determines the Worker's assignments and the Worker is to contact her supervisor at the Firm to resolve problems or complaints. Some problems may also be properly discussed with the individual at the Firm responsible for managing the Worker's contract. The Firm states that the Worker has a lot of flexibility in determining how her assignments are to be performed since she is a medical professional and her supervisor is not the same type of medical professional, but does not otherwise dispute the Firm's provision of training and instruction.

The Worker provides her services personally and does not engage helpers to assist her. The Worker does not perform similar services for others and does not advertise her services, although she is permitted to do so under the contract as long as there is no conflict with performing her duties for the Firm. The Worker is responsible to make her services known to the military community served by the Firm and to be available for referrals from other professionals at the Firm as well as other professionals serving the military community. She is represented by the Firm as a social worker, with no apparent distinction from the other social workers that the Firm treats as employees. Either the Firm or the Worker may terminate the agreement for services at any time without incurring liability.

The Firm provides all supplies, equipment, materials, and property needed by the Worker in the performance of her services. The only expenses incurred by the Worker involve offsite training and travel for which she is reimbursed by the Firm. The Firm states that the Worker is responsible for providing her own general and automotive liability insurance, but she is not required to provide medical malpractice insurance due to her coverage by relevant federal provisions. The Firm states that pursuant to the written contract, the Worker is responsible for paying her own taxes and that the contract states that the Worker's position is not a Civil Service position. The Worker states that she is paid on an hourly basis based on reported hours, earns paid leave, and has the same paid holidays as all government employees. As required under the contract, the Worker generally performs her services at the Firm's location during regular business hours.

The Firm has other individuals who perform similar services as the Worker and they are treated as employees. The Worker was also previously treated as an employee of the

Firm for a different type of clinical service. We are not aware of any meaningful substantive differences in the level of Firm's behavioral control of the Worker and that of the other workers performing similar services and treated as employees by the Firm.

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. Both the contract and the facts provided by the Firm and the Worker indicate that the Firm determines her assignments, gives instructions, requires training, resolves problems and generally establishes the manner in which she performs her work. While the Worker may have flexibility in performing her assignments, this flexibility appears to involve principally the exercise of professional skills and judgment as expected by all persons performing such services. The Worker does not have a significant investment or opportunity for profit or loss. She is paid hourly and receives paid leave and holidays. The Firm provides all supplies and equipment and reimburses training expenses. While the Worker pays for certain required insurance, this is not inconsistent with a determination that the Worker is an employee.

While the contract does in part indicate an expectation that the ensuing relationship is one of an independent contractor, including the Worker's agreement that she is responsible for all taxes, these indications are not controlling. Rather, both the terms of the contract and the facts of the relationship indicate a level of control that establishes a relationship of employee and employer.

Accordingly, it is held that the Worker is the Firm's employee and that amounts paid to the Worker 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 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