



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

SMALL BUSINESS/SELF-EMPLOYED DIVISION

September 08, 2016

Control No: SBSE-04-0916-0050

Expires: September 07, 2017

Impacted IRM: 4.23.10

MEMORANDUM FOR DIRECTOR, SB/SE SPECIALTY EXAMINATION; CHIEF, EMPLOYMENT TAX EXAMINATION; TERRITORY AND GROUP MANAGERS, AND EMPLOYMENT TAX SPECIALISTS

FROM: Alfredo Valdespino /s/ *Alfredo Valdespino*  
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SUBJECT: Emergency Interim Guidance – Contact TEGEDC When Taxpayers Raise Worker Classification or Section 530 Matters Concerning Wage Adjustment Issues

PURPOSE

The purpose of this memorandum is to alert examiners when and how they must contact TEGE Division Counsel (TEGEDC) whenever a taxpayer raises a worker classification or Section 530 of the Revenue Act of 1978 ("section 530") argument with respect to an employment tax issue that would ordinarily be treated as a wage issue.

BACKGROUND

Historically, employment tax issues fell into two categories: (1) wage issues, and (2) worker classification issues.

For worker classification issues, examiners must consider and address section 530, IRC § 3509 rates for computing the tax adjustment, and the Classification Settlement Program (CSP). Form 2504-WC is used to secure agreements to worker classification issue adjustments. Under IRC § 7436, taxpayers have the right to have their cases heard in Tax Court if they ultimately disagree with any proposed worker classification determination, or if they are denied section 530 relief. Letter 3523, *Notice of Determination of Worker Classification* (NDWC), is issued to taxpayers who ultimately disagree with a proposed worker classification adjustment (after all administrative appeals), or fail to respond to a 30-day letter offering the taxpayer the right to go to Appeals.

For wage issues, section 530, IRC § 3509 rates, and CSP are generally not applicable. Form 2504 is used to secure agreements to wage issue determinations. Generally, IRC § 7436 does not apply to wage issues and taxpayers do not have the right to have their cases heard in Tax Court if the examination adjustment is a wage issue. Wage issues that are ultimately unagreed are immediately assessed without the issuance of an NDWC.

The Tax Court's opinions in *SECC Corp. v. Commissioner*, 142 T.C. 225 (2014), and *American Airlines, Inc. v. Commissioner*, 144 T.C. 24 (2015), essentially created a new category for employment taxes – wage determinations that nevertheless cannot be immediately assessed until after the taxpayer is given an opportunity for Tax Court review. For this category, until formal guidance is provided, TEGEDC will advise the examiner on whether IRC § 7436 procedures should be followed and, which agreement and letter forms to use in each particular case.

#### INTERIM PROCESS

If during consideration of a **wage issue**, a taxpayer makes an argument regarding worker classification or relief under section 530, the examiner must, as soon as possible, contact TEGEDC (in the special manner described below) for guidance regarding how to proceed in the case. For traditional worker classification issues, examiners should continue to follow normal examination procedures in IRM 4.23.10, *Report Writing Guide for Employment Tax Examinations*, and do not need to contact TEGEDC for guidance.

This interim guidance is effective immediately and was issued under emergency procedures. More complete guidance is being developed and will be issued in the future.

#### HOW TO CONTACT TEGEDC

Do not contact your local Area Counsel office of TEGEDC as you normally would to request TEGEDC guidance.

Instead, send an email to [IGM.Wage.Adjustment.Guidance@irscounsel.treas.gov](mailto:IGM.Wage.Adjustment.Guidance@irscounsel.treas.gov) to request guidance for this specific issue, and the TEGEDC attorney assigned will contact you.

Please include the following information in the e-mail:

- State that you have a case that requires wage adjustment guidance under the September 2016 IGM.
- Taxpayer is located in (City, State).
- I am located in (City, State) and generally can be reached at (phone number) at the following times (from 6:30 to 3).
- A brief descriptions of the facts and the taxpayer's argument regarding why worker classification and/or section 530 applies to the proposed wage determination.

If you have not heard from a TEGEDC attorney after five (5) business days, forward the original email to the same email address and state that you have not yet been contacted.

If you have any questions concerning this interim guidance, please contact Ed Hutzmann, Policy Analyst, SB/SE Employment Tax, via e-mail. For case-specific questions, follow the guidance set forth above.

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