

INTERNAL REVENUE SERVICE

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The Honorable Gordon H. Smith
United States Senator
One World Trade Center
121 SW Salmon Street
Suite 1250
Portland, OR 97204

Dear Senator Smith:

This letter is in response to your inquiry dated January 25, 2001, regarding your constituent [REDACTED]. [REDACTED] asked if a sales agent working as a broker is an employee or an independent contractor. I am providing the following general information to assist you in responding to her.

For Federal employment taxes and income tax withholding, the common law standard determines whether a worker is an employee or an independent contractor. The standard says an employer-employee relationship exists when the business has the right to control and direct the individual who performs the services, decides the results to be accomplished, and how they should be accomplished. In other words, an employee is subject to the will and control of the business regarding the work and how it is done. Generally, an independent contractor decides how the work is performed. [Treasury Regulations sections 31.3121(d)-1(c)(2), 31.3306(i)-1(b), and 31.3401(c)-1(b)].

We developed Form SS-8, *Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, for taxpayers to determine the correct worker classification for Federal employment taxes and income tax withholding obligations. The Form SS-8 is completed by the business or the worker and submitted to the appropriate IRS office as instructed on the form. A Form SS-8 is enclosed.

If a worker is classified as an employee, the employer must provide a Form W-2 by January 31 of the year after the wages were paid [Section 6051 of the Internal Revenue Code (the Code)]. If a worker is an independent contractor, the business must provide a Form 1099-MISC if it paid \$600 or more for services performed [Section 6041A of the Code].

Under the Freedom of Information Act, we will make this letter available for public inspection after we delete identifying information, including names and addresses.

I hope this information is helpful. If we can be of further assistance, please contact me or Paul J. Carlino (ID # 50-18088) at (202) 622-6040.

Sincerely,

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

Encl.