

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EOEG:ET1- GENIN-104937-02

Date:

September 23, 2002

Dear [REDACTED]:

This is in response to your letter dated January 18, 2002, in which you requested a technical ruling or determination on whether you can hire an individual part time as an employee and as an independent contractor.

Under section 5.09 of Revenue Procedure 2002-1, 2002-1 I.R.B. 1 (copy enclosed and is an updated version of Publication 1375), most taxpayers must send a request for the determination of worker employment status to the appropriate Service office listed on Form SS-8 and not directly to the national office. We have enclosed a Form SS-8 in case you would like to file a request for such a determination. As a general matter, apart from this procedure for issuing a formal opinion as described in Revenue Procedure 2002-1, the Internal Revenue Service is not able to provide binding legal advice applicable to particular taxpayers. However, we are furnishing general information which we hope will be helpful to you. This general information letter is advisory only and has no binding effect on the Service.

Section 3121(d) 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 each particular case. Guides for determining 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.

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, the relationship of the worker and the business must be examined. Relevant facts generally fall into three categories; behavioral controls, financial controls, and relationship of the parties. We have enclosed Publication 15-A, Employer's Supplemental Tax guide, for more information on how to determine whether an individual providing services is an employee or independent contractor. We also

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point out that a firm can face unexpected tax consequences if it misclassifies an employee as an independent contractor.

I hope this information is helpful. Please call _____ at _____ (not a toll-free number) if you have any questions.

Sincerely,

Will E. McLeod
Assistant Branch Chief
Employment Tax Branch 1
Office of the Associate Chief Counsel
(Tax Exempt and Government Entities)

Enclosures (3)