



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

OFFICE OF
CHIEF COUNSEL

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DMParkinson
GENIN-138228-04
UIL 3121.14-00
6413.02-00

Dear _____ :

This is in response to your request for a letter ruling concerning the common paymaster provisions of the Internal Revenue Code (the Code). As a preliminary matter, apart from the procedure for issuing a formal opinion as described in Revenue Procedure 2004-1, 2004-1 I.R.B. 1, the Internal Revenue Service is not able to provide binding legal advice to particular taxpayers. In the absence of a request for formal guidance, we are only able to provide general information. Accordingly, in response to your request, we have reviewed the facts provided and set forth below general information, which we hope will be helpful to you.

You indicated that you and your brother own one hundred percent of two separate subchapter S corporations. From the facts you provided, we assume that both you and your brother are concurrently employed by both corporations. Both corporations use a payroll service provider to comply with their obligations to withhold and pay employment taxes. You inquired as to whether the Service would permit the payroll service provider to act as common paymaster for the two corporations owned by you and you brother.

The Federal Insurance Contributions Act (FICA) imposes a tax on the "income" of every individual that equals a percentage of "wages" received by the individual. See Code section 3101. FICA also imposes an "excise tax" on each employer "with respect to having individuals in his employ" that is equal to a specified percentage of wages paid by the employer. See Code section 3111. The definition of wages in Code section 3121(a) excludes that portion of remuneration for employment paid by an employer to an individual that exceeds "the contribution and benefit base" (or wage base) as determined under section 230 of the Social Security Act.

The Federal Unemployment Tax Act (FUTA), like FICA, also imposes an excise tax on an "employer" with respect to having individuals in his employ that is a specified percentage of wages paid by the employer. See Code section 3301. FUTA also contains a wage base.

Under the common paymaster provisions of the Code, if an individual performs services as an employee for two or more related corporations and one of those corporations disburses all of the compensation to that individual, then liability for taxes under the FICA and the FUTA is computed as if the common paymaster were the only employer paying the compensation it disburses. See Code section 3121(s) and Employment Tax Regulations (Regulations) section 31.3121(s)-1. The effect of the common paymaster provisions is that related corporations pay no more FICA or FUTA taxes than if the corporations were only one employer even though the employee is actually employed by several separate corporations and the employee's compensation reflects service performed for the several corporations. Thus, a related group of corporations with a common paymaster is treated as a single corporation and is not required to pay the taxes that would otherwise be due because the worker is an employee of several corporations.

In order for two or more corporations to use the common paymaster provisions, certain specific requirements must be satisfied. The Internal Revenue Service does not have the discretion to allow corporations which do not meet these requirements to use the common paymaster provisions. These requirements are that an individual must be concurrently employed by two or more corporations; one of those corporations must disburse all of the compensation to that individual; and all of the corporations must be "related corporations."

Under Regulation section 31.3121(s)-1(b)(1) corporations are considered related if they satisfy any one of the following four tests during a calendar quarter:

- (i) The corporations are members of a "controlled group of corporations" as defined in Code section 1563, or would be members if section 1563(a)(4) and (b) did not apply and if the phrase "more than 50%" were substituted for the phrase "at least 80 percent" wherever it appears in section 1563(a).
- (ii) In the case of a corporation that does not issue stock, either fifty percent or more of the members of one's corporation's board of directors (or other governing body) are members of the other corporation's board of directors (or other governing body), or the holders of fifty percent or more of the voting power to select such members are concurrently the holders of fifty percent or more of that power with respect to the other corporation.
- (iii) Fifty percent or more of one corporation's officers are concurrently officers of the other corporation.
- (iv) Thirty percent or more of one corporation's employees are concurrently employees of the other corporation.

If the common paymaster provisions are not applicable, each employer for whom services are performed is required to withhold the employee share of FICA and pay the employer share of FICA up to the contribution and benefit base as determined under section 230 of the Social Security Act. Similarly, each employer is required to pay FUTA up to the FUTA wage base.

Code section 6413 contains special rules applicable to credits and refunds of certain employment taxes. In particular, Code section 6413(c)(1) provides in relevant part that if an employee receives wages from more than one employer during a calendar year, and the wages received by that employee during the year exceed the contribution and benefit base (as determined under section 230 of the Social Security Act) the employee shall be entitled to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101(a), which exceeds the amount of tax attributable to wages equal to the contribution and benefit base. Code section 3101(a) imposes FICA taxes on an employee. However, Code section 3111(a) imposes FICA taxes on an employer. Thus, Code section 6413(c)(1) does not provide any legal authority for a credit or refund of FICA taxes paid by an employer pursuant to Code section 3111(a).

If you have any questions with regard to this letter, please call _____ of my staff _____ can be reached at _____.

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
(Tax Exempt & Government Entities)