



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

OFFICE OF
CHIEF COUNSEL

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The Honorable Herb Kohl
United States Senator
14 West Mifflin Street, Suite 207
Madison, WI 53703

Dear Senator Kohl:

This letter is in response to your inquiry dated _____, on behalf of your constituents, _____. You have forwarded several letters from _____ raising various issues arising from an underlying concern that

_____ former employer has a practice of misclassifying workers. They have asked why we have not taken any action to prevent continued misclassification. They have also raised questions about the handling of amended returns for the years _____, _____, and _____, as well as payments with respect to those returns. We understand the latter issue is being addressed by the Taxpayer Advocate's Office, and we will copy them on this letter. The Taxpayer Advocate Service provides an independent review of problems and issues that have not been resolved through normal channels.

On the issue of _____ former employer, the Internal Revenue Code prohibits the disclosure of confidential taxpayer information. Therefore, I cannot discuss with third parties any action we may or may not take regarding a particular taxpayer. Thus I am not able to address what actions we may have taken respecting _____ former employer. I can, however, address the federal tax laws on worker status, and I hope this information will be helpful.

The _____ situation involves what is generally referred to as the Form SS-8 process. I am enclosing a copy of Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, along with its general instructions for your reference. A worker or business firm can request that we determine worker status by submitting a Form SS-8. Because the Form SS-8 process

usually involves both a worker and a firm, one of whom is seeking consideration of a worker's status, we try to get information from each affected party. Therefore, we give each party an opportunity to fill out and submit a Form SS-8. Based on the information they provide, we make a determination on a worker's status. If a worker asks for the determination, both the worker and the firm are considered to be the taxpayer and both are entitled to the determination. This determination is binding on the IRS for federal employment tax purposes.

If a Form SS-8 determination results in our re-classifying a worker as an employee, we send the re-classified worker Notice 989, *Commonly Asked Questions When IRS Determines Your Work Status is "Employee."* I am enclosing a copy of Notice 989 for your reference. Notice 989 guides re-classified employees through the steps they must take to fully comply with the federal tax laws following a determination of their worker status. Usually, re-classified employees must file amended income tax returns in order to reflect their employee status. This often requires re-classified employees to move deductions they originally claimed on Schedule C, which accompanied their original Form 1040, to Schedule A on an amended Form 1040. Generally, Schedule A deductions receive less favorable tax treatment than Schedule C deductions.

A Form SS-8 determination does not constitute an examination or audit of any federal tax return. Either the worker or firm may disagree with the determination. Thus, a firm might choose to continue treating workers as independent contractors even after the IRS made a determination that the workers are employees. Of course, as with any taxpayer, the firm's tax returns would be subject to examination by the IRS. Further, an SS-8 determination may be limited to a single worker or may apply to a class of workers. Accordingly, an SS-8 determination may not apply to all of a firm's worker or classes of workers. Finally, under certain circumstances, the federal tax laws allow a firm to continue to treat certain workers as independent contractors.

The materials your office sent to us show that _____ participated in the Form SS-8 process, and we re-classified her as an employee. Therefore, the _____ amended their tax returns for the previous three years.

Although the Form SS-8 process may create some initial difficulty for a taxpayer, the process is designed to ultimately resolve what can be a complicated issue: worker status. The Form SS-8 process allows workers and firms to get a binding determination from us on the status of a particular worker in a manner that respects the interests of the worker, the firm, and sound tax administration. I am confident that participation in the SS-8 process has resolved the issue of _____ worker status, and I regret that I am unable to address the _____ other concerns. I commend their patience and effort to comply with the federal tax laws.

If you have any questions, please contact _____ at () _____ or me at () _____.

Sincerely,

Nancy J. Marks
Division Counsel/Associate Chief Counsel
Tax Exempt & Government Entities

Enclosures (2)

cc: