



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

OFFICE OF THE CHIEF COUNSEL

April 19, 2010

Number: **INFO 2010-0090**  
Release Date: 6/25/2010

CC:TEGE:EOEG:ET1  
CONEX-111407-10

UIL: 3401.04-00

The Honorable Dianne Feinstein  
United States Senate  
Washington, D.C. 20510

Attention:

Dear Senator Feinstein:

This letter responds to your inquiry dated February 17, 2010, on behalf of your constituent, . wrote about possible misclassification of workers as non-employees.

The proper classification of a worker for employment tax purposes depends on the application of law to the facts of a particular case. The Employment Tax Regulations provide the criteria for determining an individual's status as an employee or independent contractor for employment tax purposes. These regulations provide that, in general, the employer-employee relationship exists when the person for whom the individual performs services has the right to direct and control that individual not only as to the result to be accomplished by the work, but also as to the details and means by which that result is accomplished. The employer does not have to actually direct or control the manner in which the individual performs the services, but must have the right to do so. [See Treasury Regulation sections 31.3121(d)-1, 31.3306(i)-1, 31.3401(c)-1.]

If the relationship of an employer and employee exists, the parties' designation or description of the relationship as anything other than that of employer and employee is not important. This means that, if an employer-employee relationship exists, whether the parties designate the employee as partner, co-adventurer, agent, independent contractor, or the like does not matter. These rules reflect common law principles that the courts have developed and affirmed over decades. For more information about classification of workers, can see Publication 15-A, *Employer's Supplemental Tax Guide*, available at <http://www.irs.gov>. He can also find information available about proper worker classification under the Businesses tab, "Employment Taxes" heading and "Businesses with Employees" subheading at [www.irs.gov](http://www.irs.gov).

The IRS places a very high priority on the proper classification of workers. In November of 2009, the IRS announced that it would conduct an Employment Tax National Research Program starting in early 2010. The IRS will conduct random, comprehensive examinations to analyze the compliance characteristics of employment tax filers. This examination program will allow the IRS to collect examination data that will help the Service to understand the compliance characteristics of employment tax taxpayers and to use this information to improve employment tax compliance levels. The IRS will examine the proper classification of workers, among other issues. The announcement is available on the IRS website at

<http://www.irs.gov/businesses/small/article/0,,id=215350,00.html>.

Businesses or workers can file a Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, to request a determination of the status of a worker for federal employment tax purposes. The IRS also has made it easier for businesses to reclassify workers from independent contractors to employees. For tax periods beginning after December 31, 2008, a business may file a Form 941-X, *Adjusted Employer's QUARTERLY Federal Tax Return or Claim for Refund*, to report, file, and pay employment taxes for a worker who was reclassified as an employee. In January, the IRS published Publication 4341, *Frequently Asked Questions About the Reclassification of Workers as Employees*, to assist businesses that reclassify workers as employees.

I hope this information is helpful in responding to . If you have any questions, please contact me or of my staff at .

Sincerely,

/s/ Nancy Marks

Nancy Marks  
Division Counsel/Associate Chief Counsel  
(Tax Exempt & Government Entities)