



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

OFFICE OF THE CHIEF COUNSEL

May 5, 2010

Number: **INFO 2010-0116**

Release Date: 6/25/2010

CONEX-114343-10

UIL: 3504.00-00

The Honorable Mark Souder
U.S. House of Representatives
1300 South Harrison St. Room 3105
Fort Wayne, IN 46802

Dear Mr. Souder:

This letter responds to your inquiry dated March 26, 2010. You asked about the effect of a proposed regulation on veterans and widows who receive certain veterans' benefits.

Various federal, state, and local government programs seek to help elderly or disabled individuals maintain their independence by funding home health care and other personal services. The government agencies that administer the programs seek to assist the service recipients with employment tax compliance by helping the service recipients to designate agents to report, file, and pay employment taxes on their behalf.

The proposed regulation permits designated agents to provide comprehensive assistance for federal employment tax purposes to these service recipients who are employers. Specifically, the proposed regulation allows a home care service recipient to designate an agent under section 3504 of the Internal Revenue Code to report, file, and pay all employment taxes, including Federal Unemployment Tax Act (FUTA) taxes. This change allows an agent to file a single FUTA tax return (i.e., Form 940) on behalf of multiple home care service recipients as the agent does currently for income tax withholding and Federal Insurance Contributions Act (FICA) taxes (i.e., Form 941). Taxpayers may rely on the proposed regulations for guidance pending issuance of the final regulations.

An employer is generally defined as a person who employs one or more employees. [See Treasury Regulation sections 31.3121(d)-2, 31.3306(a)-1(a), 31.3401(d)-1.] The Employment Tax 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.]

For a full text of the proposed regulation, please see *Section 3504 Agent Employment Tax Liability*, REG-137036-08, 2010-6 I.R.B. 398, available at http://www.irs.gov/irb/2010-06_IRB/ar11.html. The proposed regulation does change the definition of employer. It also does not add any new employment tax obligations on employers. It merely permits an agent that acts on behalf of employers who are home care service recipients (as defined in the proposed regulation) to perform the FUTA acts of an employer.

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

Sincerely,

/s/ Janine Cook

Janine Cook
Branch Chief, Employment Tax Branch 1
(Exempt Organizations/Employment
Tax/Government Entities)
(Tax Exempt & Government Entities)