

ID: CCA_2010010513143632

Number: **201005035**

Release Date: 2/5/2010

Office:

UILC: 7701.00-00

From:

Sent: Tuesday, January 05, 2010 1:14:42 PM

To:

Cc:

Subject: RE: Counsel assistance Requestl

Hi

Please do go ahead and scan the taxpayer's position paper and send it in to us. I will have take a look at it and try to provide some assistance. It seems to me that the taxpayer is really trying to challenge the validity of the check-the-box regulations. This has been tried before (although not in this specific context) and the courts (in cases like [Litriello](#) and [McNamee](#), among others) have uniformly upheld the validity of the check-the-box regs as a valid exercise of the Service's authority to promulgate rules classifying entities where Congressional intent is ambiguous. Those cases, and others like them, will have a lot of good ammunition to combat the taxpayer's Chevron arguments. The SSA argument is something new that I don't think we have considered before. I think it's a red herring, though. The Internal Revenue Code and regulations determine who the employer is. Also, SSA relies on information on Forms W-2 to compile earnings records which are used to determine eligibility for benefits. In cases like the one you are describing, the Forms W-2 (if properly completed and filed according to our rules) would show that the individuals worked in covered employment.