



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

OFFICE OF THE CHIEF COUNSEL

November 09, 2011

Number: **2011-0095**
Release Date: 12/30/2011

CC:TEGE:EOEG:ET2
GENIN-141078-11

UIL: 3406.07-00; 3121.04-01

Dear _____ :

This letter responds to your request for information dated August 19, 2011. You requested advice as to whether it is appropriate to pay a vendor C Corporation for services rendered when the C Corporation's sole owner had provided only her own social security number (SSN) and not the employer identification number (EIN) of the C Corporation on the Form W-9. The question of payment to the C Corporation is linked to the question of whether the C Corporation would be subject to backup withholding by the payor school district.

Generally, under regulation section 31.3406(d)-1 backup withholding applies if the payee does not furnish the payee's taxpayer identification number (TIN) to the payor, as required by section 3406. Similarly, backup withholding applies if there is a mismatch between the name and the TIN provided to the payor. Corporations, however, are generally exempt from backup withholding. See Treas. Reg. § 1.6049-4(c)(1) and Form W-9 *Instructions for the Requester*. A payor is permitted to treat a payee as exempt without a proper certificate of exemption or, alternatively, may require the payee to provide a Form W-9 or other document for claiming exempt status. Treas. Reg. § 31.3406(g)-1(b).

A payor, therefore, may pay an invoice directly to a C Corporation payee despite the fact that the Form W-9 submitted to the payor shows a mismatch between the name and the TIN of the payee and there is no affirmative indication (i.e. no check in the "exempt payee" box) that the payee is exempt from backup withholding.

Please be aware that, depending on the nature of the arrangement between the school district and the instructor, for tax purposes the instructor could be considered an employee of the school district rather than an independent contractor. Whether someone who works for the school district is an employee or an independent contractor has important tax consequences. For employees, the district must generally withhold

federal employment tax and file Forms W-2, *Wage and Tax Statement*, showing the wages paid and taxes withheld for the year for each employee. For independent contractors, generally no withholding is required.

In general, someone who performs services for you is your employee if you can control what will be done and how it will be done. In determining whether an individual is an employee or an independent contractor, one must consider all evidence of both control and lack of control or autonomy. Relevant facts generally fall into three main categories:

- behavioral control,
- financial control, and
- the relationship of the parties.

Please see IRS Publication 15-A for a more detailed discussion of determining worker status. In addition, the district may submit Form SS-8, *Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, to request a determination or ruling letter regarding the instructor's federal employment tax status. There is no user fee for this type of ruling request.

This letter has called your attention to certain general principles of the law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2011-1, §2.04, 2011-1 IRB 1. If you have any additional questions, please contact . He can be reached at .

Sincerely,

Lynne Camillo
Chief, Employment Tax Branch 2
Office of the Division Counsel/Associate Chief
Counsel
(Tax Exempt & Government Entities)