



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

OFFICE OF THE CHIEF COUNSEL

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The Honorable Raúl Labrador
Member, U.S. House of Representatives
33 East Broadway, Suite 251
Meridian, Idaho 83642

Attention:

Dear Congressman Labrador:

I apologize for the delay in responding to your inquiry dated May 20, 2013, on behalf of your constituent,
She asked for information about her organization's employment tax obligations such as federal income tax withholding, social security tax, and Medicare tax.

We cannot rule on this factually intensive matter, apart from the procedure for issuing a formal opinion described in Revenue Procedure 2013-1, 2013 IRB 1, but hope the following is helpful to .

The key to determining employment tax responsibility is identifying the employer-employee relationship to establish whether the worker is an employee or an independent contractor with respect to a taxpayer. The determination of an employer-employee relationship is made in regards to common law rules under a facts-and-circumstances analysis. The general rule states that "such relationship exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to the result to be accomplished, but also as to the details and means by which that result is accomplished." We have identified three categories of evidence we consider when making this determination: behavioral, financial, and type of relationship.

- Behavioral: Does the taxpayer control or have the right to control what the worker does and how the worker does his or her job?

- Financial: Are the business aspects of the worker's job controlled by the taxpayer?
- Type of Relationship: Are there written contracts or employee type benefits (for example, pension plan, insurance, vacation pay)?

If the taxpayer is the employer, the taxpayer is liable for employment taxes.

Generally, wages paid to employees working in the United States are subject to social security and Medicare taxes. Half of the social security and Medicare taxes are imposed upon employees and half imposed upon the employer. The employer is responsible for collecting and paying over the employee portion of these taxes as well as paying the employer portion of these taxes (Internal Revenue Code (IRC) §§ 3101, 3102, 3111, 3121). Generally, wages paid to employees working in the United States are also subject to Federal Unemployment Tax Act (FUTA) tax, which the employer pays (IRC §§ 3301, 3306). Generally, wages paid to employees employed in the United States are subject to federal income tax withholding. (IRC §§ 3401, 3402, 3403).

I have enclosed a copy of Publication 15 (Circular E), *Employer's Tax Guide*, which provides guidance on employment tax withholding by a foreign employer of United States employees working in the United States.

This letter only explains certain general principles of law. It is intended for informational purposes only and does not constitute a ruling. See Rev. Proc. 2013-1, § 2.04, 2013-1 I.R.B. 1 (Jan. 2, 2013).

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

Sincerely,

Michael Swim
Senior Technician Reviewer
Employment Tax Branch 1
Division Counsel/Associate Chief Counsel
(Tax Exempt & Government Entities)

Enclosure