

**Internal Revenue Service**

Department of the Treasury

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Person to Contact:

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Telephone Number:

Refer Reply To:

**CC:EBEO:3-PLR-122153-97**

Date:

**March 5, 1999**

Attn:

Key:

Worker =

Firm =

Dear

This is in response to a request for reconsideration of ruling (CC:EBEO:3 - PLR-106617-97), dated August 22, 1997, which concluded that the above named Worker was the Firm's employee for federal employment taxes purposes.

In support of the request for reconsideration, you have submitted a detailed statement of the reasons you believe the Worker was an independent contractor. After careful review of that statement as well as related material, we affirm our prior determination that the Worker was an employee of the Firm for Federal employment tax purposes. We note, however, that we address only the employment tax status of the named Worker and express no opinion as to the employment tax status of other workers who may be performing similar services for the Firm. Our views as to this particular Worker are as follows:

Training. The Firm states that the ruling attaches undue significance to the one training class provided the Worker by the Firm. As we noted in the prior ruling, formal training does not provide persuasive evidence of either an employee or independent contractor relationship, and, consequently, is given no weight in this reconsideration.

Instruction and Supervision. The Firm states that it did not retain the right to change the methods used by the Worker and that the Worker was not subject to direct supervision in the performance of services. The Firm also states that the Worker received few instructions, if any, from the Worker's supervisor and that the supervisor

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interacted with the Worker no more than two or three times per week, and then only for purposes of payment of invoices and review of work logs. This information conflicts with previous statements made by the Worker's supervisor that control over the Worker was exercised by the Firm and that the Worker checked in with the supervisor throughout the day. Both parties have acknowledged that the Worker was given instructions by the supervisor. Thus, it appears that this particular Worker was subject to direction of the type ordinarily given to employees.

Tools and Materials. The Firm states that the ruling misinterprets the facts relative to tools and materials. In this case, the Firm acknowledged that it provided all of the tools, equipment, and materials needed by the Worker in the performance of services. These included a computer, tools for working on computers, desk, and office space. This arrangement is more consistent with employee than independent contractor status.

Reports. The Firm states that reports filed by the Worker were not for the purposes of evaluating the Worker's performance, but were a means of identifying problems experienced by users. The facts indicate that the Worker reported daily and submitted a weekly report to the Firm or its representative. However, because this was not a formal procedure, we give no weight to this factor.

Principle Business Purpose. The Firm states that the ruling does not give any weight to the fact that the services provided by the Worker were only peripherally related to the Firm's business. As the initial point of contact for computer and information systems users, the services provided by the Worker were a necessary component of the Firm's ability to accomplish its mission. However, the extent to which the services provided are a key aspect of the regular business of a service recipient does not provide evidence of a worker's status. Thus, the presence or absence of integration of the Worker's services in the Firm's business is given no weight in this case.

Intent of the Parties. The Firm states that the ruling does not give any weight to the intent of the parties. A written agreement describing a worker as an independent contractor is viewed as evidence of the parties' intent to create a non-employee relationship. However, a contractual designation, in and of itself, is not sufficient evidence to base a determination of worker status. It is the substance of the relationship, rather than the label, that governs this determination. In this case, the contract for services provided that the Worker's employment status was that of a "contractor." This fact, however, was contradicted by other facts that provided a view of the actual conditions and circumstances under which the Worker's services were performed.

Employee Benefits. The Firm states that the ruling fails to acknowledge that the Worker received no employee benefits from the Firm. The fact that a worker is excluded from a benefits plan because the worker is not considered an employee by the business is a relevant factor, although not conclusive, in making a determination as

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to employee status.

Permanency. The Firm states that the ruling fails to consider the temporary nature of the Worker's relationship with the Firm. The Worker apparently provided services for only three months, however, the contract provided that the Worker was to provide services for one year. The length of the relationship is consistent with either employee or independent contractor status.

After a careful review of the information originally submitted in this case, the information provided in the conference of right, and the statement submitted in the request for reconsideration, we affirm the determination reached in our prior ruling that this Worker was an employee of the Firm for employment tax purposes.

We express no opinion as to whether other workers performing similar services are employees or independent contractors.

This letter does not constitute a Notice of Determination Concerning Worker Classification Under Section 7436 of the Internal Revenue Code.

This ruling is directed only to the taxpayer to whom it is addressed. Section 6110(k)(3) of the Internal Revenue Code provides that it may not be used or cited as precedent.

Sincerely,

HARRY BEKER  
Chief, Branch 6  
Office of the Associate  
Chief Counsel  
(Employee Benefits and  
Exempt Organizations)

Enclosure:

Copy of ruling for 6110 purposes