

Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

Number: **199923015**
Release Date: 6/11/1999

Person to Contact:

Telephone Number:

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Refer Reply To:

CC:EBEO:6 - PLR-118904-98

Date:

March 5, 1999

Key

Worker =

Firm =

Dear

This is in response to your request of September 14, 1998, for reconsideration of our ruling (CC:EBEO:3 - PLR-117686-97) which concluded that the above-named Worker was the Firm's employee for purposes of federal employment taxes.

In support of the request for reconsideration, you have submitted a detailed statement of reasons you believe the Worker was an independent contractor. In your request, you state that the contract specifically provides that the Worker's services were unsupervised in nature. A written agreement describing a worker as an independent contractor is viewed as evidence of the parties' intent to create a nonemployee 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. Moreover, in this case, the contractual provisions themselves are inconsistent. The contractual provision providing that the Worker's services are unsupervised is contradicted by other provisions of the contract.

A review of the Work Statement portion of the contract indicates the following:

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Section E. of the Work Statement states that “The services will be monitored by the Supervisor of Education.” It also states that “Services will be unsupervised in nature, however, due to the nature of the services provided, some direction will be provided by the Supervisor of Education. The performance of these services will also be verified by the Contract Specialist or the designated Contracting Officer’s Technical Representative.”

Section F of the Work Statement provides that “The incumbent [Worker] will monitor the progress through official periodic review which will be monitored by the Literacy Coordinator. The incumbent [Worker] will submit lesson plans to the Literacy Coordinator each week. Individual student flow charts/progress charts will be maintained on each and monthly evaluations will be submitted to the Literacy Coordinator. The incumbent [Worker] will use a curriculum provided by the or other pre-approved curriculum to ensure that course objectives are met.”

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, there is sufficient evidence that the Firm exercised the degree of direction and control over the services performed by the Worker sufficient to establish an employer-employee relationship. Accordingly, we affirm the decision reached in the original ruling issued to the Firm on March 19, 1998, that the Worker was an employee for federal employment tax purposes.

This letter does not constitute a Notice of Determination Concerning Worker Classification Under Section 7436 of the Internal Revenue Code. Section 6110(k)(3) of the Code provides that this ruling 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: