Internal Revenue Service

Department of the Treasury

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Washington, DC 20224

199914044

Person to Contact:

Telephone Number:

Refer Reply To:
CC:EBEO:6 - PLR-107769-98

Date:
JAN - 8 1999

Attn:

Key

worker =

firm =

X =

Dear

This is in response to a request for a ruling submitted by the above-named worker concerning his federal employment tax status with respect to services he performs preparing and selling court transcripts.

The federal employment taxes are those imposed by the Federal Insurance Contributions Act (FICA) and the collection of income tax at source on wages. In cases that involve a possible employer-employee relationship, it is our practice to solicit information from all of the parties involved. Accordingly, this ruling is based on the information we received from both X and the worker.

According to the information submitted, the firm is a district court. The worker is engaged to attend and record court proceedings and prepare transcripts for the government and private sector. As compensation for attending and recording court proceedings, the worker receives an annual salary and is treated as an employee. The firm reports this income on Form W-2. In addition, as compensation for preparing transcripts, the worker receives income from fees charged to the parties ordering the transcripts pursuant to a fee schedule established by the Judicial Conference. The firm reports this income on Form 1099. This ruling is concerned only with the federal

employment tax status of the worker with respect to the services he performs in selling transcripts.

The worker's services are performed pursuant to a Court Reporter's Manual and a Guide to Judiciary Policies and Procedures. X states that in order to ensure that litigants and parties are not overcharged for transcripts and because an official court reporter is the only one authorized to report court proceedings, the Judicial Conference, pursuant to statutory authority, has prescribed the transcript format and fee requirements. Court reporters may not deviate from these requirements when preparing official transcripts. Court reporters can, however, request a deposit on transcripts from private parties, but cannot similarly request deposits on transcripts from the firm. The worker is required to submit regular reports to the Clerk of the Court concerning attendance, transcripts furnished and fees charged, as well as receipts and earnings.

The worker performs his services at the firm's location, although X states that he may perform them elsewhere. He is provided with office furniture and a telephone. The worker has a financial investment with respect to his transcription equipment. Any expenses incurred by the worker, such as transcription costs and postage, are paid by the worker. A Certified Shorthand Reporter license is necessary to perform the services and the license fee is paid by the worker. It is understood that the worker performs his services personally. The worker states that when necessary, he may engage helpers to assist him. X and the worker disagree about whether the firm's approval is necessary when helpers are hired. The worker pays the helpers from the transcription fees and reports their earnings to the Service.

Section 3121(d)(2) of the Internal Revenue Code defines "employee" as any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee.

The question of whether an individual is an employee under the common law rules or an independent contractor is one of fact to be determined upon consideration of the facts and the application of the law and regulations in a particular case. Guides for determining the existence of that status are found in three substantially similar sections of the Employment Tax Regulations, namely, sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1, relating to the FICA, the FUTA, and federal income tax withholding, respectively.

Section 31.3121(d)-1(c)(2) of the regulations provides that generally, the relationship of employer and employee 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 by the work, but also as to the details and means by which that result is accomplished. That is, an employee is subject to the will and control of the employer not only as to what shall be done but as to how it shall be done. In this

connection, it is not necessary that the employer actually direct or control the manner in which the services are performed; it is sufficient if he or she has the right to do so. In general, if an individual is subject to the control or direction of another merely as to the result to be accomplished and not as to the means and methods for accomplishing the result, he or she is an independent contractor.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of employer and employee exists, the designation or description of the relationship by the parties as anything other than that of employer and employee is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is designated as partner, coadventurer, agent, independent contractor, or the like.

Rev. Rul. 58-360, 1958-2 C.B. 423 examines the status of individuals engaged as Federal court reporters. The ruling provides that in addition to the statutory wage received for performance of their basic duties, the court reporters receive income from fees charged for furnishing official transcripts of recorded proceedings to those persons ordering them. The maximum page fees charged for such transcripts are prescribed by the Judicial Conference. However, in certain instances such as in cases of an unduly long trial, or those requiring daily copy or voluminous transcription, the reporter retains bargaining power in that fees charged are the result of an agreement, albeit subject to the court approval, between the reporter and the person ordering the transcript. Transcripts ordered by any person, other than the judge, are generally billed to that person. The ruling concludes that fees received by Federal court reporters from the preparation and sale of official transcripts represent income from a trade or business, such activity being aside from their basic duties for which they receive a statutory wage. Such additional income is includible in computing net earnings from self-employment for purposes of the tax on self-employment.

We have carefully considered the information submitted in this case. In applying the principles enunciated in the Code, regulations and Rev. Rul. 58-360, we conclude that the fees received by the worker from the sale of transcripts represents income from a trade or business and that such income is includible in computing net earnings from self-employment. Accordingly, the worker is not the firm's employee with respect to the services he performs in selling transcripts.

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

This ruling is applicable to any other individuals engaged by the firm under similar circumstances. This ruling is directed only to the taxpayer to whom it is addressed. Section 6110(k)(3) of the 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 for section 6110 purposes