

## **Worker providing services in multiple roles can be employee and independent contractor**-Jan.11, 2013

### **Information Letter 2012-0069**

IRS has issued an information letter which says that, in the situation of a professional consultant working for a company on two separate consulting projects, it is possible for that person to be both an employee of the company and an independent contractor. IRS stated when a worker provides services in two separate roles to the same business, the relationship between the worker and business is examined separately for each group of services.

**Background.** Code Sec. 3121(d)(2) defines an employee as any individual who, under the common law, has the status of an employee. IRS reviews the facts and circumstances in each particular case. Reg. § 31.3121(d)-1(c)(2) states that an employer-employee relationship exists when the person for whom the services are performed has the right to direct and control the individual who performs the services, not only as to the end results of the work, but also as to the details and means by which the results are accomplished. The employer does not necessarily have to actually direct or control the manner in which the services are performed; it is sufficient if the employer has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law rules, IRS looks at: (1) the relationship of the parties (any agreements between the worker and the company, how they perceive the relationship, and how they represent the relationship to others); (2) behavioral controls (whether the business has the right to direct or control how the worker performs his assigned task); and (3) financial controls (whether the company has the right to control the financial aspects of the worker's activities, including the method of payment, the worker's opportunity for profit or loss, whether the worker has made a significant financial investment, and whether the worker has incurred unreimbursed expenses). If the employer-employee relationship exists, the employee's income is subject to FICA taxes and withholding.

**Issue.** The Information Letter considered a case where a worker is providing services in two separate roles for the same business. The letter specifically addressed the employee status of a person working as a professional consultant on two separate consulting projects.

**Worker can be both employee and independent contractor.** IRS found that, in certain circumstances, a worker can be both an employee and independent contractor in respect to a company.

In the case where a worker is providing services in two separate roles for the same business, IRS examines separately the relationship between the worker and the business for each service provided by the worker. If an employer-employee relationship is only found with respect to one of the roles performed by the worker, only the remuneration from that role will be subject to FICA tax and income tax withholding. If an employer-employee relationship is found for both roles, then all remuneration received by the worker will be subject to FICA tax and income tax withholding.

The letter notes that a business may file Form SS-8, **Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding**, to request an IRS determination on whether a worker should be classified as an employee or an independent contractor.