

**Internal Revenue Service**  
SB/SE, Compliance  
BIRSC, SS-8 Unit

**Department of the Treasury**  
40 Lakemont Road  
Newport, VT 05855-1555

**April 8, 2005**

Correctional Dental Associates PC  
192 West State Street  
Trenton, NJ 08608-1104-921

**Form: SS-8**

**Person to Contact:**  
**Marybeth Torosian 03-00469**

**Telephone Number: 802-751-4432**  
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**Refer Reply to: Case # 37965**

Dear Dr. Bastecki:

This is in response to a Form SS-8 that was submitted to request a determination of employment status for Federal employment tax purposes, between Correctional Dental Associates PC, hereafter referred to as the firm, and Paul Crowley and W. Francis Cunningham and others, hereafter referred to as the workers, for services performed in 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005.

We hold the workers to be employees of the firm. In the rest of this letter, we will explain the facts, law, and rationale that form the basis for this finding.

The information provided indicates that the workers are dentists, engaged to provide dental services at various dental clinics at state prisons. The firm is under contract to provide dental services to the incarcerated population of the state. The workers are told when and where to work. They use equipment owned by the state and supplies purchased and owned by you. The workers are required to follow an employee handbook, and are under the guidance of a supervisor. The workers do not incur any business expenses, and are paid a salary. The workers perform a service that is the principle activity of the firm. Any of the parties can terminate the relationship at any time without incurring a liability.

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

The question of whether an individual is an independent contractor or an employee 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 Treasury Regulations. They are sections 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1 relating to the Federal Insurance Contributions Act (FICA), the Federal Unemployment Tax Act (FUTA), and Federal income tax withholding on wages at source, 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 results to be accomplished by the work, but also as to the details and means by which the 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 also 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 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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or autonomy must be considered. In doing so, one must examine the relationship of the worker and the business. Facts that illustrate whether there is a right to direct or control how the worker performs the specific tasks for which he or she is hired, whether there is a right to direct or control how the financial aspects of the worker's activities are conducted, and how the parties perceive their relationship provide evidence of the degree of control and autonomy.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

We have applied the law, regulations, and principles as cited above to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, therefore, rests on the weight given to the factors under the common law, keeping in mind that no one factor is determinative of a worker's status. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed. In weighing the evidence, careful consideration has been given to the factors outlined below.

Under the common law, the relationship of employer and employee exists when the person for whom the services are performed has the right to control not only what is done, but also how it is done. Evidence of control generally falls into three categories: behavioral controls, financial controls, and relationship of the parties, which are collectively referred to as the categories of evidence.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions and the provision of the means to do the work. In this case, you tell the workers when and where to work, you hire the assistants and direct the workers as to the sequence of the work, and also require that they follow the guidelines of a handbook supplied by you. Therefore, you retain the right to change the worker's methods and to direct the workers to the extent necessary to protect your financial investment and business reputation.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the workers did not invest capital or assume business risks. The workers are paid a salary and therefore, do not have the opportunity to realize a profit or incur a loss as a result of their services.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the workers are not engaged in an independent enterprise, but rather the services performed by them are a necessary and integral part of your business. All the parties retained the right to terminate the work relationship at any time without incurring a liability.

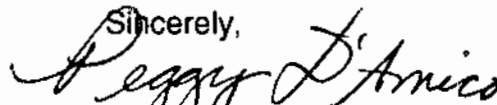
In evaluating the facts in this case, it is clear that the worker performed services in a manner consistent with an employer-employee relationship. Applying the law, regulations, and principles set forth in various revenue rulings and court cases, noted above, as well as the categories of evidence outlined above, we conclude that the workers are employees of the firm for Federal employment tax purposes, and not an independent contractor engaged in his/her own trade or business.

Compensation to an individual classified as an employee is subject to Federal income tax withholding, Federal Insurance Contributions Act tax (FICA), and Federal Unemployment Tax Act (FUTA) tax as provided by sections 3101, 3301, and 3401 of the Internal Revenue Code, and it is possible you are liable for the same.

This determination is based on the application of law to the information presented to us and/or discovered by us during the course of our investigation; however, we are not in a position to personally judge the validity of the information submitted. This ruling is directed only to the taxpayer to whom it is addressed, however, it may be applicable to any other individuals engaged by the firm under similar circumstances. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent.

Our records indicate that you have been correctly treating the workers as employees by issuing them the Form W-2.

Sincerely,



Peggy D'Amico  
Operations Manager

cc: Paul B. Crowley  
W. Francis Cunningham