



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

DEC 28 1998

CC:EBEO:2

UILC: 7436.03-02

Number: **199919004**

Release Date: 5/14/1999

MEMORANDUM FOR DISTRICT COUNSEL

FROM: Assistant Chief Counsel
(Employee Benefits and Exempt Organizations) CC:EBEO

SUBJECT:

LEGEND

Date 1	=
Date 2	=
Date 3	=
Date 4	=
City, State	=

We are forwarding the attached Tax Court case legal file to you for assignment to an attorney in your office because the designated place for trial is City, State. The petition was served on the IRS Chief Counsel's office on Date 1.

On Date 2, the Service sent the taxpayer a "Notice of Determination Concerning Worker Classification Under Section 7436", advising the taxpayer that the Service had determined during the course of an employment tax audit that one or more individuals performing services for the taxpayer are to be legally classified as employees for purposes of the federal employment taxes under subtitle C of the Internal Revenue Code and that the taxpayer is not entitled to employment tax relief pursuant to section 530 of the Revenue Act of 1978 with respect to such individuals.

Taxpayer filed a petition for review of that determination with the Tax Court on Date 3. The petition bears a postmark date of Date 4. Because the postmark date is not before the 91st day after the Notice of Determination was sent, the

petition is not considered timely filed. Therefore, you should file a motion to dismiss for lack of jurisdiction.

Please refer to Rules 290 through 295 of the Tax Court's Rules of Practice and Procedure for guidance in filing responsive pleadings.

Finally, because the Tax Court has yet to issue any reported decisions on proceedings under section 7436, you should coordinate all documents filed with the Tax Court with the National Office (Employee Benefits and Exempt Organizations Division, Branch Two). The name of the branch two attorney assigned to the case appears in National Office Attorney field of Case Screen 2 of the TL-CATs computer system and she can be reached at 202-622-6040. When the case is assigned, your attorney may contact her to send you a sample motion and answer to assist you in litigating this case.

MARY OPPENHEIMER

By: _____
JERRY E. HOLMES
Chief, Branch 2, CC:EBEO:2

Attachments:
Legal file