

Internal Revenue Service (I.R.S.)

Field Service Advisory

January 31, 1995

subject: Employee/Independent Contractor Status of Athletic Officials

This is in response to your memorandum dated November 22, 1994, in which guidance is requested in determining the employment status of certain athletic officials in ***.

FACTS

The officials described in the memorandum officiate at high school and recreational league sports events. They belong to various local officials' associations (approximately ***) throughout the state and to a centralized "****." For their officiating services, they are paid a fee, either on a per game basis or at the end of the season. The fee is established under an agreement between the *** and the school districts. They are reimbursed for travel expenses. They pay for their uniforms and equipment and may terminate their employment without penalty. They may accept or reject assignments. They must attend rules clinics sponsored by the ****, and they must personally perform the officiating services.

According to your letter, the *** is a division of the "****," an interscholastic activities association comprised of public and private high schools that use the officials for the sports events they sponsor. The *** are separate from the ****.

DISCUSSION

Employee v. Independent Contractor

An individual is an employee for federal employment tax purposes if the individual has the status of an employee under the usual common law rules applicable in determining the employer-employee relationship. Section 3121(d) of the Internal Revenue Code. Generally, 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 application of the law and regulations in a particular case. See *Professional & Executive Leasing v. Commissioner*, 89 T.C. 225, 232 (1987), *aff'd*, 862 F.2d 751 (9th Cir. 1988); *Simpson v. Commissioner*, 64 T.C. 974, 984 (1975). Guides for determining the existence of that status are found in three substantially similar sections of the Employment Tax Regulations, namely, §§ 31.3121(d)-1, 31.3306(i)-1, and 31.3401(c)-1, of the Federal Insurance Contributions Act ("FICA"), the Federal Unemployment Tax Act ("FUTA"), and federal income withholding, respectively.

Among the factors used by courts in determining whether the employer-employee relationship exists are: 1) the degree of control exercised over the details of the work; 2) the worker's investment in the facilities; 3) the worker's opportunity for profit or loss; 4) whether the type of work is part of the principal's regular business; and 5) the permanency of the relationship. United

States v. Silk, 331 U.S. 704, 716 (1947).

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. The right to discharge is also an important factor indicating that the person possessing that right is the employer. Other factors characteristic of an employer, but not necessarily present in every case, are the furnishing of tools and the furnishing of a place to work to the individual who performs the services. 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.

Revenue and Private Letter Rulings Involving Athletic Officials

As you note in your memorandum, the Service has considered whether athletic officials are employees or independent contractors in two revenue rulings and in private letter rulings.

Rev. Rul. 57-119, C.B. 1957-1 331 holds that officials, engaged, trained, and supervised by an intercollegiate association of colleges and universities to officiate at its sporting events, were employees of the association. On the other hand, Rev. Rul. 67-119, C.B. 1967-1 284 holds that officials comprising a nonprofit association who officiated at high school sporting events were independent contractors.

Rev. Rul. 67-119 distinguished Rev. Rul. 57-119, comparing the officials' association's public purpose of providing a source from which high schools could secure the services of competent officials with the intercollegiate association's purpose of managing and controlling its members' athletic programs, which included the training and supervision of athletic officials. Furthermore, the officials in Rev. Rul. 67-119 were engaged by the schools to perform services while the officials in Rev. Rul. 57-119 were engaged by the association. Rev. Rul. 67-119 concluded that the high school association's level of control over its officials did not rise to the same level enjoyed by the intercollegiate association in Rev. Rul. 57-119.

Since issuing these revenue rulings, the Service has issued six private letter rulings concerning athletic officials. In all but one ruling, LTR 81-341-85, the Service has concluded that the officials were independent contractors. In LTR 81-341-85, involving an intercollegiate athletic association, the Service found the circumstances sufficiently similar to those in Rev. Rul. 57-119 to conclude that the association exercised or had the right to exercise control over the officials and that the officials were employees. In the other five rulings, the Service concluded that the level of control was insufficient and ruled that the officials were independent contractors. In these rulings, the circumstances were more similar to those found in Rev. Rul. 67-119. We recognize that private letter rulings may not be used or cited as precedent, but the foregoing revenue and private letter rulings illustrate the importance the Service attaches to the control

factor in determining employment status in this and other areas. See e.g., Treas. Reg. 31.3121(d)-1(c)(2).

Analysis of Athletic Officials in ***, ***, a combination of public and private high schools, appears analogous to the intercollegiate association in Rev. Rul. 57-119. We assume that its purpose is generally the same as the intercollegiate association in Rev. Rul. 57-119, namely, to manage and control the athletic programs of its members, the public and private high schools in ***. ***, a division of the ***, appears to exert substantial influence over an exceptionally large network of local associations and their member officials.

As you note in your letter, a number of factors suggest that the *** controls the officials and their respective local officials' associations: 1) The officials must be members of the *** to officiate high school games; 2) The officials may appeal grievances with their local association to the ***; 3) *** imposes attendance requirements and dress codes; 4) *** provides rules governing the formation of new local associations and the acceptance of transferring officials; 5) The officials pay dues to the ***; and 6) *** establishes the fees received by the officials under an agreement with the school districts.

These and other factors contained in your memorandum, while not conclusive, suggest that the *** is an organization possessing the control, or right to control, sufficient to support an employer-employee relationship with the officials. Although the ***'s control is filtered to some extent through the local associations, you may wish to consider further investigation to determine whether the local associations are simply extensions of the ***.

Moreover, the facts in your letter suggest circumstances distinguishable from those in Rev. Rul. 67-119. In Rev. Rul. 67-119, the officials' association was a "self-governing organization." Based on the information in your letter, the ***, a division of the ***, appears to exercise more than modest control over the affairs of the local associations; e.g., hearing officials' grievances against the local associations. In Rev. Rul. 67-119, the high school athletic league was a "separate and distinct organization from the [officials'] association." In *** the local associations and its officials are members of the ***. In Rev. Rul. 67-119, the officials were engaged by the schools using the officials' services. Under your facts, it appears that some local associations pay their officials directly. In short, it appears that the local associations in *** are more than mere "booking offices" for the members of ***.

The *** are not associated with the *** or the ***. Apparently, the *** may either pay the officials directly, or a local association may bill a *** and pay its member official. Generally, an official's duties and conditions of work in *** events are the same as those in ***'s events.

Unlike the apparent control exercised by the ***, the *** appear not to exercise, or have the right to exercise, control over either the officials or the local associations. For example, the *** do not train or supervise the officials. Additionally, there is no indication that they have any influence in setting the officials' fees. Thus, unlike the circumstances surrounding the ***, the circumstances under which officials serve the *** suggest an independent contractor status.