CLICK HERE to return to the home page

Rev. Rul. 84-161

ISSUE

Is a trucking company entitled to relief under section 530 of the Revenue Act of 1978 (the Act) under the circumstances described below?

FACTS

A trucking company, founded in 1970, treated its drivers as employees for federal employment tax purposes from 1970 through 1978. At the beginning of 1979, with no change in the working relationship between the company and the drivers, the company began treating the drivers as independent contractors. The Internal Revenue Service conducted an audit of the company's 1979 federal income tax return but did not question the employment tax status of the drivers.

LAW AND ANALYSIS

Section 530(a)(1)(A) of the Act, 1978-3 (Vol. 1) C.B. xi, 119, which was extended indefinitely by section 269(c) of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), 1982-2 C.B. 462, 536, provides that if, for purposes of federal employment taxes, a taxpayer did not treat an individual as an employee for any period, then the individual will be deemed not to be that taxpayer's employee for purposes of applying such taxes to such period, if the taxpayer had a "reasonable basis" for not treating the individual as an employee and if the taxpayer also meets the other requirements of section 530.

Section 530(a)(3) of the Act, as amended by section 269(c) of the TEFRA, provides that section 530(a)(1) will not apply with respect to the treatment of any individual for employment tax purposes, for any period ending after December 31, 1978, if the taxpayer (or a predecessor) has treated any individual holding a substantially similar position as an employee for employment tax purposes for any period beginning after December 31, 1977. See also section 2 of Rev. Proc. 81-43, 1981-2 C.B. 616.

Section 530(a)(2) of the Act and section 3 of Rev. Proc. 81-43 list three standards, any one of which is a "safe haven" in determining whether a taxpayer has a "reasonable basis" for not treating an individual as an employee. Reasonable reliance on past Internal Revenue Service audit (not necessarily for employment tax purposes) of the taxpayer is one of the "safe havens," if the audit entailed no assessment attributable to the taxpayer's employment tax treatment of individuals holding positions substantially similar to the position held by the individual whose status is at issue.

Because the company in this case treated the drivers as employees in 1978, it did not meet the requirements of sections 530(a)(1)(A) and 530(a)(3) of the Act. Consequently, section 530 relief is unavailable and the 1979 audit of the company is irrelevant; the Service is not barred from challenging the company's 1979 reclassification of its drivers.

HOLDING

The trucking company is not entitled to relief under section 530 of the Act. Text:

Determination of Quarterly Rate of Excise Tax for Railroad Supplemental Annuity Program

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(C)), the Railroad Retirement Board has determined that the excise tax imposed by such Section 3221(c) on every employer, with respect to having individuals in his employ, for each work- hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1984, shall be at the rate of 20 cents.

In accordance with directions in Section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1984, 25.0 percent of the taxes collected under Sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 75.0 percent of the taxes collected under such Sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under Section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Supplemental Account.

Dated: May 16, 1984

By authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

(Filed by the Office of the Federal Register on May 23, 1984, 8:45 a.m. and published in the issue of the Federal Register for May 24, 1984, 49 F.R. 22009)