

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

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

**Date: September 16, 2005**

Rolando C. Thomas  
5127 Abington Road  
Florissant, MO 63033-7402 273

**Form: SS-8**

**Person to Contact:**  
Nan Moses 03-00367

**Telephone Number: 802-751-4429**  
**Facsimile Number: 802-751-4455**

**Refer Reply to: Case # 37346**

Dear Mr. Thomas:

This is an information letter in response to your inquiry about your status, for Federal employment tax purposes, while performing services from 2001 through 2003 for Fedex Ground.

An information letter is advisory only and is issued to assist you personally in meeting your tax obligations. It is not binding on any other party.

It is our opinion that you would be considered an employee for Federal tax purposes. In the rest of this letter, we will explain the basis for this opinion. It is based solely on the employment conditions as set forth on the Form SS-8 you submitted. Any other conditions that were not known or furnished may change this opinion.

The firm is a national small package delivery company. You completed an application in November 2001 and were hired as a contract pick up and delivery driver for Fedex Ground. You worked a specific PSA (primary service area) assigned by the firm. You were responsible for delivering and picking up all packages in this area. At the time of hire, you watched training videos and rode with other contract drivers for on-the-job training. You worked a full time schedule set by the firm. The firm dictated your daily starting time. You were required to wear the firm's uniforms and have the firm's logos on your truck. You attended mandatory safety meetings and other meetings called by the firm. Attendance at these meetings was mandatory and you were not compensated for this time. You were supervised by a terminal manager. The firm had expectations of complete and timely daily deliveries with consequences for failure that could result in termination. You were not required to perform the services personally. The firm had to qualify any substitute driver you hired.

You bought a truck that met the firm's specifications. You were responsible for all expenses related to the truck. The firm tracked the truck's maintenance and provided vehicle and worker's compensation insurance coverage that you could purchase. You purchased the firm's business support package that provided decals, business cards, uniforms, drug testing, assistance programs, annual DOT inspections, software, and lease of the firm's scanning equipment at a per-day rate. The firm set the per-stop and per-package rate of compensation. If your PSA was reconfigured over which you had no control, you received compensation for each pick up or delivery relinquished. The firm also paid you a 'fuel supplement' amount to help offset the rising cost of fuel and a per-package loading fee for loading your truck in the morning. A 'van availability' bonus was paid to you for making the truck available each day and an increased amount for the days before and after holidays. You received a weekly settlement statement and check from which all costs and payments were computed.

The firm and you signed a Standard Contract Operating Agreement. The contract deemed you to be an independent contractor but dictated policy and procedures for all aspects of the job. The work done was an integral part of the firm's business and a continuing relationship existed. There is no indication you had your own business entity. The evidence shows no "business" exists independently and apart from your relationship with the firm. You are dependent on the firm for their employment and should the relationship with the firm end, your "business" would also end. You did not advertise or perform similar services for the relevant market. You were not allowed to use your truck for other delivery work.

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; namely, 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, respectively.

As explained in section 31.3121(d)-1(c)(2) of the Treasury Regulations, 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 what is to be done, but how it is to be done. In this connection, it is not necessary that the employer actually direct or control the individual, it is sufficient that the employer has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of control and autonomy must be considered. Facts which illustrate whether there is a right to direct and control how the worker performs the specific tasks for which he or she is hired, whether there is a right to direct

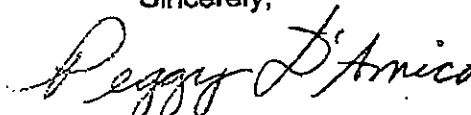
or control how the business aspects of the worker's activities are conducted, and how the parties perceive their relationship provide evidence of the degree of control and autonomy. See Rev. Rul. 87-41, 1987-1 C.B. 296, Publication 15, "Circular E, Employer's Tax Guide", and Publication 15-A, "Employer's Supplemental Tax Guide."

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 is immaterial. Thus, if such relationship exists, it is of no consequence that the employee is contractually designated as a partner, coadventurer, agent, independent contractor, or the like.

Accordingly, you are liable for your Federal income tax and your share of Federal Insurance Contributions Act (FICA) tax according to Internal Revenue Code section 3101 and further explained in section 3509(d)(1)(A). Please refer to the enclosed Notice 989, "Commonly Asked Questions When IRS Determines Your Worker Status is Employee," for applicable filing/amendment requirements and instructions regarding your Federal income tax and FICA tax obligations.

You should amend your 2001, 2002, and 2003 tax returns to reflect your employee status. Attach a copy of this opinion letter and Form 4137 to your completed Forms 1040X, Amended Returns, and forward them to the IRS Campus where you normally file your returns. Do not wait for corrected documents from the firm.

Sincerely,



Peggy D'Amico  
Operations Manager

Enclosures: Notice 989  
Forms: 1040X & Instructions  
2001, 2002, 2003: 4137

\*To order forms and publications, please call 1-800-TAX-FORM or visit us online at [www.irs.gov](http://www.irs.gov).

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