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Rev. Rul. 83-16

ISSUE

Is a medical corporation that treats doctors as other than employees under the circumstances described below entitled to relief under section 530 of the Revenue Act of 1978 (the Act), 1978-3 C.B. (Vol. 1) 1, 119, extended by section 9(d) of Pub. L. No. 96-167, 1980-1 C.B. 483, 486, by section 1 of Pub. L. No. 96-541, Tax Treatment Extension Act of 1980, 1980-2 C.B. 596, and by section 269 of the Tax Equity and Fiscal Responsibility Act of 1982, 1982-2 C.B. 462, 535?

FACTS

During 1979 and 1980, three doctors were employees of a medical corporation that operated a clinic. In 1981, each doctor created a trust and entered into an agreement as grantor to assign the doctor's lifetime services to the trust. The corporation entered into contracts with the trusts to pay them for the services performed by the doctors.

The corporation did not treat the doctors as employees in 1981. In not doing so, the corporation did not claim to meet any of the specific "safe haven" provisions of section 530(a)(2)(A), (B), or (C) of the Act. However, the corporation asserts that it has shown, in some other manner, a reasonable basis for not treating them as employees because it had signed service contracts with the trusts and was paying for contract services rather than for services of employees.

LAW AND ANALYSIS

Section 530 of the Act, as extended, provides generally that if, for purposes of the employment taxes under subtitle C of the Internal Revenue Code, a taxpayer did not treat an individual as an employee for any period, then for purposes of applying <Page 236> these taxes for this period the individual will be deemed not to be an employee unless the taxpayer has no reasonable basis for not treating the individual as an employee. One requirement of section 530 is consistency; for any period during 1979 and subsequent periods the relief does not apply if the taxpayer (or a predecessor) treated any individual holding a substantially similar position as an employee for employment tax purposes beginning after 1977.

Rev. Rul. 75-257, 1975-2 C.B. 251, holds that an individual grantor, who transferred a personal residence, rental property, and income producing securities to a so-called "Family Estate" trust in exchange for all the "units of beneficial interest" therein, with the grantor, the grantor's spouse, and a third party as trustee, is considered the owner of the trust under either section 674, 676, or 677 of the Code. Assignment of the grantor's "lifetime services" to the trust, which included all remuneration earned regardless of its source, is ineffective to shift the grantor's tax burden to the trust.

In Rev. Rul. 80-321, 1980-2 C.B. 33, which cites Rev. Rul. 75-257, a corporation's employee assigned "lifetime services" to a trust and the trust contracted to provide services to the corporation for a monthly fee equal to what otherwise would have been the employee's gross monthly salary. The employee continued to perform the same tasks for the corporation, under the same conditions, and with the same amount of control as before the assignment. The revenue

ruling holds that the assignment is ineffective as a means of avoiding the employee's income tax liability with respect to the payments for the services, and the payments are wages for purposes of the Federal Insurance Contributions Act and income tax withholding.

In the present case, the trust arrangement is ineffective to alter the income and employment tax consequences of the doctor's performance of services for the corporation, even though payment for the services is made to the trust. Rev. Rul. 80-321, Rev. Rul. 75-257. Thus, section 530 relief is not available to the doctors for 1981 because the same individuals were treated as employees for 1979 and 1980. Treatment of those individuals as employees for such years violates the consistency requirement of section 530 of the Act.

HOLDING

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

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

In accordance with directions in Section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C., Section 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, 1983, shall be at the rate of 18 ½ 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, 1983, 25.3 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 74.7 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 Retirement Supplemental Account.

Dated: May 12, 1983.

By authority of the Board.

James T. Brown,

Chief Executive Officer.

(Filed by the Office of the Federal Register on May 18, 1983, 8:45 a.m., and published in the issue of the Federal Register for May 19, 1983, 48 F.R. 22659)