



TaxNewsFlash

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U.S. Tax Court: At-home private nurses were employees for federal employment tax purposes

The U.S. Tax Court today issued a memorandum opinion* upholding the IRS' determination that the taxpayer failed to classify approximately 99 individuals as employees during tax years 2016-2018 and was therefore liable for federal employment taxes, additions to tax under section 6651(a)(1), failure-to-deposit penalties under section 6656, and accuracy-related penalties under section 6662(a) for the years at issue.

The case is: *Pediatric Impressions Home Health, Inc. v. Commissioner*, T.C. Memo. 2022-35 (April 12, 2022). Read the [T.C. Memo opinion](#) [PDF 213 KB]

*A memorandum opinion is issued by the Tax Court in a case with respect to which the law is settled or factually driven (i.e., in a case that does not involve a novel legal issue). A memorandum opinion may be cited as precedent.

Summary

The taxpayer was engaged in the business of providing at-home private duty nursing services to children with special needs (patients) during the years at issue. The taxpayer hired nurses to perform these services on its behalf. When a nurse applied to work for the taxpayer, the taxpayer required the nurse to complete a written job application, pass a background check, and complete a nursing skills assessment it administered. The taxpayer also verified the applicant's nursing credentials, ensured the applicant did not have any professional infractions, checked his or her references, and confirmed that he or she was adequately trained.

The taxpayer supplied all nurses with a contract for services that the nurses signed before beginning work. The taxpayer hired the nurses on a permanent basis for an indefinite period, and the taxpayer normally informed the nurses that they were "employed" on a "full-time" basis with the taxpayer. The taxpayer had the sole authority to fire a nurse at will whereas a nurse could not end the working relationship without a minimum of two weeks' notice.

The taxpayer, not the nurses, received payment for the nursing services. The nurses had no contact with the patients' insurance companies, the state, or Medicaid, with the taxpayer representing to the patients and their legal guardians that the nurses worked for the taxpayer. The nurses were not

required to find their own patients. Rather, insurance companies assigned a patient to the taxpayer, who would then assign a nurse to that patient. The taxpayer likewise had sole authority to reassign a nurse to another patient. The taxpayer did not allow the nurses to admit new patients to the taxpayer's business. A nurse could decline to provide services to a patient, but, depending on the reason, refusal to accept an assignment could jeopardize future assignments and potentially lead to termination.

The Tax Court first noted that the taxpayer bears the burden of proving that the nurses were not its employees during the years at issue, as well as the burden of proving that it is not liable for penalties. Based on the above described facts, along with other relevant facts described in the opinion, the Tax Court found that the relationship between the taxpayer and the nurses during the years at issue was best characterized as that of common law employment. The Tax Court further found that the record did not reflect that the taxpayer acted with reasonable cause when it unilaterally decided to start treating the nurses as independent contractors for federal employment tax purposes in 2016, and thus that the taxpayer was liable for the assessed additions to tax and penalties.

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