

Keogh Denied in Connection With Corporation Director Fees

IRS reclassified these corporation director fees as wages. Since the taxpayer no longer had director fees, the taxpayer was no longer eligible to have a retirement plan based on the director fees. The key here is whether the monies received by the taxpayer were received due to his capacity as an officer or as a director.

IRC Section 3121(d) states: “the term “employee” means –(1) any officer of a corporation.”

Regulation 31-3121(d)-1(b) discusses this by stating: “Corporate officers. Generally, an officer of a corporation is an employee of the corporation. However, an officer of a corporation who as such does not perform any services or performs only minor services and who neither receives nor is entitled to received, directly or indirectly, any remuneration is considered not be an employee of the corporation. A director of a corporation in his capacity as such is not an employee of the corporation.”

Various Revenue Rulings and court cases have addressed the status of a corporate director as being self-employed including RR 72-86 and RR 68-595.

Mr. Burbach received wages for providing services to the corporation and also received fees to sit on the board of directors. He reported his director’s fees on Schedule C and set up a Keogh and funded it to the maximum. IRS denied the treatment of the director’s fees, reclassifying them as wages, and therefore also denied the Keogh deductions. Tax Court agreed with IRS.

Mr. Burbach formed BAI, a corporation to help municipalities evaluate their needs for a public pool, plan and market the pool, and organize the fundraising to finance construction of the pool. Mr. Burbach was the sole shareholder and the sole member on the Board of Directors.

A retirement plan had been set up for BAI but contributions were only made for Mr. Burbach and not for other employees who met the eligibility tests. The retirement plan was later corrected and a settlement agreed to with IRS. Part of the retirement plan settlement agreement included BAI treating the director’s fees paid to Mr. Burbach as compensation for the plan purposes.

Mr. Burbach also did not provide which services he was performing as an officer and which services he was performing as a member of the Board of Directors. Also the previous settlement that the director’s fees were compensation for the corporation’s retirement plan purposes, Tax Court determined the director fees received by Mr. Burbach were compensation as wages and not self-employment income. Therefore the Keogh deduction was also denied.

Key – Keeping track of services provided as employee versus director turns out to be important.

Burbach, TC Memo 2019-17

Upcoming seminar listed below.

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UPCOMING SEMINARS:

May 16 & 17, Michigan Chapter of NATP at Double Tree, 4747 28th St, SE, Grand Rapids, MI. Topics include Teens & Taxes (kiddie tax, scholarships, dependents, and more), Elections, HSAs, Schedule C, Medicaid, Social Security planning, and Ethics. For more information go to www.minatp.org.

May 21, Orange County Chapter of California Society of Enrolled Agents at the Phoenix Club in Anaheim, CA. David is presenting 1031 Exchanges and Resident Alien Issues. For more information go to eaoc.org.