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TAX OBLIGATIONS OF A HOUSEHOLD EMPLOYEE

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TAX OBLIGATIONS OF A HOUSEHOLD EMPLOYER

The paperwork burden can be severe

Hiring a household worker for many people may bring to mind the funny story of Mary Poppins because of the difficulty of finding someone capable of dealing with lively children. However, hiring a household worker may be only the beginning of many problems that one encounters. The *Wall Street Journal* reported in 1989 that the "servants shortage" has reached a crisis stage in that so-called friends are stealing one another's housekeepers in Beverly Hills.¹ The hiring and retention of a nanny or a housekeeper, assuming one can prevail upon the worker to stay, may be the least of one's worries. Recent articles, some with humor and some with very little, indicate increased awareness of the tax obligations of a household employer.²

The first issue that needs to be addressed is whether a household worker should be properly classified as an employee or as an independent contractor. Proceeding on the assumption that most household workers are employees, household employers should be aware of their administrative and tax-related responsibilities, both for federal and California purposes.

Why does it matter to the "service consumer" whether a household worker is an independent contractor or an employee? Employment taxes is one reason. If the domestic is an independent contractor, he or she will be liable for his or her own income taxes and self-employment taxes. However, if the household worker is an employee, the service consumer as an employer has many responsibilities for withholding, paying and reporting employment taxes.

In determining whether a domestic should be properly classified as an employee, a few myths should be dispelled at the outset. If the employment relationship exists, it does not matter if the employee is designated as an independent contractor.³ Nor does it matter if the person works part-time or full-time or if the wages are paid hourly, daily, weekly or monthly.⁴

The Internal Revenue Service (IRS) recently has resumed aggressive examination of employee versus independent contractor issues although not necessarily for household employers.⁵ Those who believe

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that a household employer's employment tax obligations are unimportant should be aware that in both the House and Senate versions of the comprehensive urban aid tax bill, there are provisions that require household employers to pay employment taxes on the individual employer's income tax returns instead of requiring separate employment tax returns.⁶ Even if a third party pays a domestic's wages, the governing factor in determining who is the employer is not who furnishes the funds but who has the right to supervise and control the domestic in doing the job and whether the right is being exercised as principal.⁷

How does one determine whether a domestic is an independent contractor or an employee? There is no bright line rule, although the guidance issued by the IRS attempts to define an employee under common law rules.⁸ Under the common law, if a worker performs services that are subject to an employer's will and control as to both what must be done and how it must be done, the worker is an employee. It is not necessary for the employer to exercise such rights as long as the employer has the legal right to control both the method in which the services are performed and the result.⁹ An examination of the "particular facts of each case" is required in "doubtful cases."¹⁰

The long-standing position of the IRS has been that domestics (even if they call themselves practical nurses) who are subject to virtually complete discretion and control in the performance of their service in a private household are employees.¹¹ Consider the following hypothetical:

Mary is a housekeeper who has child-care duties. She cares for two children, cleans the house, does laundry and ironing and prepares meals for the children. Each morning Mary reports to the home and Mrs. Banks explains what needs to be done. Instructions are given on how to do the work and the specific duties that Mary performs each day are determined by the priorities set by Mrs. Banks. Mary is hired for an indefinite period to personally provide her services. Mary reports at a set time each morning and Mrs. Banks supplies Mary with all equipment and supplies such as vacuum, mop, brooms, soaps and cleansers. Further, Mrs. Banks reimburses Mary for gas expense when she goes to the grocery store and for her daily trips to pick up the children from school.

In this setting, the IRS has ruled that

Mary is an employee.¹²

There is a wide spectrum of arrangements that can be entered into with respect to household help. There are special rules concerning whether an employment relationship exists if the domestic services are performed by a relative¹³ or if a sitter is engaged through a referral agency.¹⁴ There is also the intriguing possibility that the household worker may be an employee of a contractor engaged by the household. For example, domestics who only perform cleaning services based on a house cleaning company's instructions or "home watchers" who check homes of clients who are out of town, water plants and feed pets may be employees of the company, and not of the household.¹⁵

On rare occasions the IRS has ruled that providers of child-care services in their own homes are properly treated as independent contractors when the parents rely extensively on a provider's judgment and give no instructions other than those relative to diet, health and rest or whom to contact in case of emergency.¹⁶

EMPLOYER ADMINISTRATIVE OBLIGATIONS

A household employer is required from the outset to obtain an employer identification number, commonly known as an "EIN," within seven days of paying wages that are subject to Social Security taxes.¹⁷ Normally a household employer applies for an EIN by filing Form SS-4, Application for Employer Identification Number, with the IRS. However, there is special treatment for household employers who only employ domestics: the IRS may assign an EIN without an application.¹⁸

A household employer must also obtain an eight-digit account number and register with the California Employment Development Department (EDD) within 15 days after paying \$750 in wages.¹⁹ The EDD will then mail the employer a quarterly tax return which sets forth the current tax rates for payment of payroll taxes for that period.²⁰

Certain record-keeping obligations also become immediately applicable for federal and California purposes. This involves keeping records for each household employee of the cash wages paid, the employee's name and Social Security number (or if unavailable, present address) and the amount of employee Social Security tax collected with respect to the cash wages.²¹ Both the IRS and the EDD suggest that household employers should keep

By Louis E. Michelson

payroll records and all records on employment taxes for at least four years.²²

At the same time that the household employer deals with the various tax forms, he or she must also contend with the intricacies of employment eligibility verification in a non-discriminatory manner.²³ When household employers hire a new employee, they need to determine that each new employee is eligible to work in the United States. This includes the completion of Form I-9, Employment Eligibility Verification, for each new employee.²⁴ If there was any doubt as to whether these provisions apply to a household employer, the Immigration and Naturalization Service (INS) handbook provides a clear warning: "If you employ anyone for domestic work in your private home on a regular basis (such as every week), these requirements apply to you."²⁵

The INS may be alerted to noncompliance with the immigration law if an employer tries to assist a domestic in obtaining a green card. The *Washington Post* reported one story where a Presbyterian minister in Hollywood was fined \$877 for an immigration law violation which the INS was alerted to by the Labor Department under an agreement between the two government agencies.²⁶ The min-

ister had sought and obtained a Labor Department certification that hiring the alien worker will not affect American workers. Had the minister not tried to sponsor the domestic, INS officials acknowledged that nothing would have happened.

The legal status of a worker also is important for federal employment tax purposes because employers are required to keep a record of the name and Social Security number of each new employee.²⁷ Social Security numbers are generally issued to U.S. citizens or to non-U.S. citizens with proper INS documents. If an illegal alien is not authorized to work in the U.S., a card indicating that the bearer cannot work might be issued, together with a warning that if the bearer does work "we [the Social Security Administration] will notify the INS."²⁸

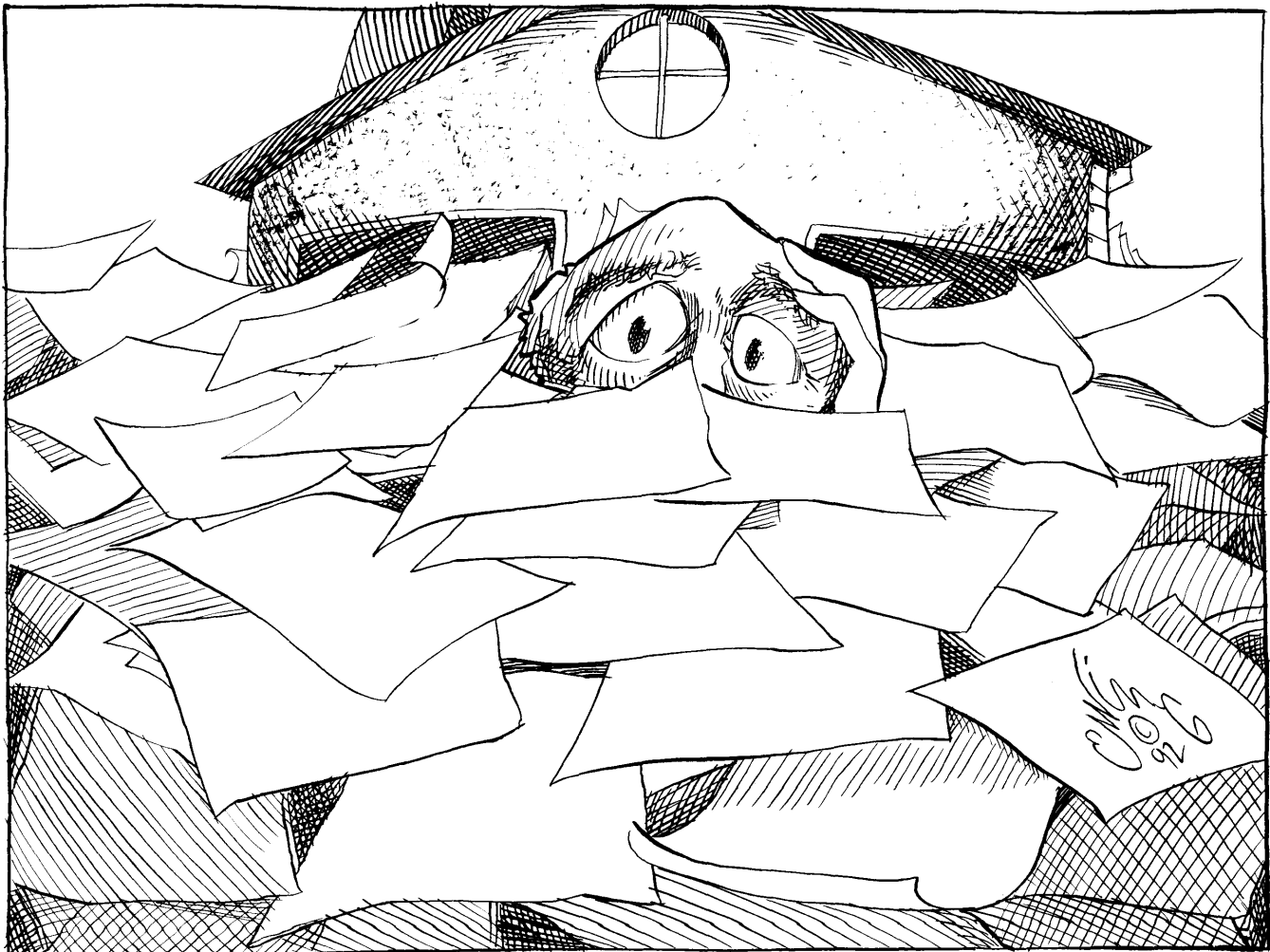
It is usually the employee's obligation to obtain a Social Security number through the filing of Form SS-5, Application for a Social Security Card, and then furnish it to the employer.²⁹ If an employee does not have the number, there are other requirements that an employee ordinarily must fulfill.³⁰ However, if the worker is only performing domestic services in a private home, the requirements are relaxed and

the employee is only required to advise the employer of his full name and present address.³¹

TAX WITHHOLDING OBLIGATIONS

Experienced employees are aware of payroll taxes withheld from their paychecks. A household worker who may be less sophisticated may expect to be paid the full amount of the "negotiated" pay in cash without any reduction because of payroll taxes. Well-advised household employers can review IRS Publication 926, *Employment Taxes for Household Employers*, and the EDD's "1992 Household Employer's Guide" to familiarize themselves with their tax-related obligations. Alternatively, a household employer could simplify his or her involvement by using a payroll service, which could then withhold and remit the appropriate taxes and prepare the appropriate tax filings. This expense may seem worthwhile, even for one employee, given that the household employer's obligations are largely similar to those of any other employer, with certain significant exceptions.

Income Tax Withholding. The first special rule that applies to household employers and domestics is significant and yet should not lull household employers into complacency regarding payroll taxes.



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Household employers are not required to deduct and withhold either federal income taxes or state income taxes from payments made for household services in a private home.³² This rule is limited to *income* taxes and does not govern a household employer's obligations with respect to other payroll taxes.

The household employee and the employer may nonetheless enter into voluntary withholding agreements that will be binding on the employer.³³ This is generally done by the household worker completing and submitting a Form W-4, Employee's Withholding Allowance Certificate, to the employer.

Other Taxes: Threshold Amounts. A household employer is not required to withhold certain payroll taxes until payments to the household worker exceeds certain thresholds. For instance, an employer is permitted but not required to withhold Social Security taxes if the employee receives less than \$50 or less in cash wages in any calendar quarter.³⁴ An employer is subject to both federal and state unemployment taxes if cash wages of \$1,000 or more are paid to a domestic in any calendar quarter in either the current or preceding calendar year.³⁵ These thresholds will be easily surpassed by any household employer who pays more than \$77 dollars per week.³⁶ The following discussion is based on the assumption that the threshold amount has been exceeded.

Social Security (FICA) Taxes. FICA taxes are imposed on both household employer and household employee on the wages paid by the employer to the employee up to a certain maximum wage base. In 1992 a tax rate of 7.65 percent applies to all wages up to \$55,500.³⁷ An employer can pay the employee's share of the Social Security taxes, although there must be special accounting for this.³⁸

Unemployment Taxes. A household employer is liable for a federal unemployment tax at a rate of 6.2 percent of the first \$7,000 of cash wages paid to each employee.³⁹ However, an employer may take a credit against the federal unemployment tax for payments made for California unemployment insurance taxes.⁴⁰ The California unemployment insurance tax is imposed only on the first \$7,000 of wages paid annually.⁴¹

The tax rate for California unemployment insurance varies based on the employer's experience rating, which is usually issued annually.⁴² For the first three years, a new household employer typically would be given the standard tax rate of 3.4 percent. If the employer makes correct and timely payments of the California unemployment insurance tax, the total federal unemployment tax is approximately 0.8 percent of the total taxable wages.⁴³

Employment Training Tax. California also imposes on household employ-

ers an employment training tax for calendar years 1983 through 1993. A tax rate of 0.1 percent applies to all wages up to \$7,000 that are paid to an employee during the calendar year.⁴⁴

Disability Tax. California imposes an unemployment insurance tax on employees.⁴⁵ The employees' tax goes into a special fund for disability benefits. In 1992 this tax is imposed at a rate of 1.25 percent⁴⁶ on an employee's wages up to \$31,767.⁴⁷

REPORTING AND PAYING TAXES

After the household employer has made all of the required payroll tax computations a household employer must confront the next cumbersome obligation: reporting and paying these payroll taxes. The paperwork involved has prompted a range of reactions from newspaper articles⁴⁸ to proposed federal legislation that would simplify the reporting burden of a household employer.⁴⁹ The following are some of the basic⁵⁰ reporting and payment obligations.

A household employer is required to deposit FUTA tax when the tax liability for a calendar quarter exceeds \$100.⁵¹ This amount must be deposited by the last day of the following month. Deposits are made using Form 8109, Federal Tax Deposit Coupons.⁵²

On a quarterly basis, an employer is required to file Form 942, Employer's Quarterly Federal Tax Return, starting with the first quarter in which the employer paid wages subject to Social Security tax or withheld any federal income tax.⁵³ The comparable state quarterly reporting form is Form DE 3DP, which is due the month following the close of each calendar quarter.⁵⁴ Form DE 3DP also is used to pay the California payroll taxes that are due.

One of the problems that a household employer may encounter in filing Form 942 is if the employer does not have the Social Security number of each employee, which is requested in filing Form 942. In this instance, the IRS has a procedure already outlined in the Treasury Regulations.⁵⁵ The employer simply is required to enter the word "Unknown" in the Social Security account number column of the return and file with the return a statement showing the employee's full name and present or last-known address. This address should be entered by the employer on the return form immediately following the name of the employee.

On an annual basis, a household employer is required to file Form 940 or Form 940-EZ, Employer's Annual Federal Unemployment (FUTA) Tax Return, which is due generally one month after the year ends.⁵⁶ Form DE 43, Annual Reconciliation of Income Tax Withheld, must also be filed with the EDD before February 28 of each year.⁵⁷ Also, an employer is

required to furnish each employee with a completed Form W-2, Wage and Tax Statement, by January 31, as well as send a copy of this form together with Form W-3, Transmittal of Income and Tax Statements, to the IRS and to the EDD.⁵⁸

In connection with a household employer's personal income tax obligations, two points deserve mention. First, if a domestic is hired for the care of children under the age of 13 so that the household employer can be employed or can seek employment, the child and dependent care credit may be claimed under some circumstances on the household employer's personal income tax return.⁵⁹ There may be a risk that the information reported, which includes the name, address and Social Security number of the recipient, might be matched on government computers to see if the recipient is legally an employee and to verify proper payroll tax withholding by the employer and the employee.⁶⁰ Second, household employers may be required to pay employment taxes on their individual income tax returns if the urban aid tax legislation is enacted.⁶¹

The household employer should not take the mind-numbing responsibilities outlined above lightly because there are numerous penalties (and interest) that might be imposed. The costs of not complying with the various federal and state laws far outweigh the costs of compliance.

The triggering event that forces a household employer to consider the costs of non-compliance may occur unexpectedly. The most dramatic and perhaps unlikely scenario would be if a domestic files Form SS-8, Determination of Employee Work Status for Purposes of Federal Employment Taxes and Income Tax Withholding, to clarify his or her status as an employee. If a domestic applies for Social Security, disability or unemployment insurance benefits, there may be a surprise for the employer as well as for the domestic.

WORKERS' COMPENSATION

A household employer may be exposed to unlimited personal liability if a domestic is injured while working in the home. The workers' compensation system generally protects employers because in return for liability without fault, employers have fixed and ascertainable liability. The workers' compensation scheme in California has special rules for household employees based on certain time and wage criteria. A domestic who works less than 52 hours per week is expressly excluded from the definition of "employee" under the Labor Code and would only be able to recover damages in courts of general jurisdiction on the grounds of negligence.⁶²

A household employee who actually works more than 52 hours per week (living time on the premises while not working does not count⁶³) has different rights than a

domestic who works less than 52 hours per week. As an employee who is governed by the workers' compensation law, assuming that the household employer obtains the requisite insurance, the domestic is ordinarily prevented from suing his or her employer under negligence and his or her sole and exclusive remedy against the employer is the right to recover workers' compensation benefits.⁶⁴ However, if the household employer has failed to purchase workers' compensation insurance, there is a special law that allows the household employee to seek workers' compensation benefits and also permits an action for damages against the employer as if the workers' compensation law did not apply.⁶⁵

What should a household employer do? It may help to recall Mary Poppins's tea party in which everybody remained suspended in mid-air as long as they laughed. A sad thought brought the party down from the ceiling. Thoughts about employment taxes, immigration laws and unlimited personal liability might bring household employers down to the ground as well. ◆

¹ Hughes, *At the Best Parties, Guests Steal Maids Instead of Silverware*, Wall St. J., Jul. 26, 1989, at 1, col. 4.

² Klein and Brown, *Employer or Contractor? You'd Better Review Law*, L.A. Times, Apr. 30, 1992, at E4, col. 3; Harper, *The Yuppie Secret, Many Flout the Law on Reporting Taxes for Domestic Help*, Wall St. J., Apr.

15, 1992, at 1, col. 1; Yoder, *IRS—The Hand That Taxes the Cradle*, Wall St. J., Mar. 19, 1992, at 12, col. 4; Rosen, *Paying the Maid Requires Care*, N.Y. Times, Nov. 11, 1989, at 20, col. 1.

³ I.R.C. §31.3401(c)-1(e).

⁴ I.R.C. §31.3401(a)-1(a)(3).

⁵ See Falk and Gelgman, *Defending Employee vs. Independent Contractor Issues*, 71 J. TAX'N 380 (1989); Yoder, *supra* n. 2 ("With bigger crooks to catch, the IRS doesn't aggressively hunt transgressing homes, says Gerald Portney, a tax expert at KPMG Peat Marwick. 'The Service is very concerned with return on investment,' he says, 'and the return here is very poor.'")

⁶ H.R. 11, 102d Cong., 2d Sess. §4902 (1992); Senate Version of H.R. 11, 102d Cong., 2d Sess. §4801 (1992); see also H.R. 2777, 102d Cong., 1st Sess. §701 (1991).

⁷ Rev. Rul. 56-605, 1956-2 C.B. 696.

⁸ See I.R.C. §3121(d)(2); Treas. Reg. §§31.3121(d)-1(c); 31.3306(i)-1(b); 31.3401(c)-1(b); see also Rev. Rul. 87-41, 1987-1 C.B. 296 (sets forth a 20-factor test which may be applied in determining whether an individual is an employee or an independent contractor).

⁹ Treas. Reg. §31.3121(d)-1(c)(2).

¹⁰ Treas. Reg. §31.3121(d)-1(c)(3).

¹¹ Rev. Rul. 61-196, 1961-2, C.B. 155; Priv. Let. Rul. 87-16-044 (Jan. 16, 1987); Priv. Let. Rul. 87-11-044 (Dec. 12, 1986); Priv. Let. Rul. 87-08-013 (Nov. 21, 1986); Priv. Let. Rul. 87-07-063 (Nov. 19, 1986); Priv. Let. Rul. 86-52-030 (Sep. 26, 1986).

¹² Priv. Let. Rul. 88-22-077 (Mar. 8, 1988); see also *Hodgkinson v. Commissioner*, 27 T.C.M. (C.C.H.) 865 (1968); Priv. Let. Rul. 89-17-033 (Jan. 30, 1989); Priv. Let. Rul. 88-39-077 (Jul. 6, 1988); Priv. Let. Rul. 87-16-022 (Jan. 15, 1987); Priv. Let. Rul. 86-51-077 (Sept. 24, 1986).

¹³ Treas. Reg. §31.3121(b)(3)-1; see also *Palmer v. Celebrezze*, 334 F.2d 306 (3rd Cir. 1964); *Rhodes v. Flemming*, 180 F. Supp. 664 (D.Md. 1960); Rev. Rul. 54-572, 1954-2 C.B. 341; Rev. Rul. 54-521, 1954-2

C.B. 355.

¹⁴ I.R.C. §3506; Treas. Reg. §31.3506-1; Rev. Rul. 80-365, 1980-2 C.B. 300; Priv. Let. Rul. 92-06-002 (May 28, 1991).

¹⁵ Priv. Let. Rul. 88-20-078 (Feb. 23, 1988); Priv. Let. Rul. 79-04-114 (Oct. 27, 1978).

¹⁶ Rev. Rul. 77-279, 1977-2 C.B. 12.

¹⁷ I.R.C. §6011; Treas. Reg. §31.6011(b)-1.

¹⁸ Treas. Reg. §31.6011(b)-1(b).

¹⁹ UNEMP. INS. CODE §1086; Form DE 8829, 1992 Household Employer's Guide (henceforth California Guide), at 1, Registration.

²⁰ California Guide, at 1, How to Compute the Taxes.

²¹ Treas. Reg. §31.6001-2(b); see also Treas. Reg. §§31.6001-1 (records in general), 31.6001-5 (additional records in connection with collection of income tax at source on wages); LAB. CODE §226(a) (itemized written statement must be kept for three years).

²² Treas. Reg. §31.6001-1(e)(2), UNEMP. INS. CODE §1085; IRS Publication 926, Employment Taxes for Household Employees (henceforth Publication 26), at 4, Recordkeeping; California Guide, at 3, Maintaining Wage Records.

²³ Immigration Reform and Control Act of 1986, §101, 8 U.S.C. §1324a (1986); Immigration Act of 1990, §531, 8 U.S.C. §1324b (1990).

²⁴ Handbook for Employers, Instructions for Completing Form I-9, at 3, Pt. Two, When You Must Complete the Form I-9.

²⁵ *Id.* at 2, Pt. One, Why Employers Must Verify Employment Eligibility of New Employees.

²⁶ Kamen, *INS Law Spurs Willful Illegal Hiring of Home Help*, Wash. Post, Nov. 10, 1991, at A4, col. 1.

²⁷ Treas. Reg. §31.6011(b)-2(c).

²⁸ Instructions for Form SS-5, Application for a Social Security Card, at 4, If You Are Not a U.S. Citizen.

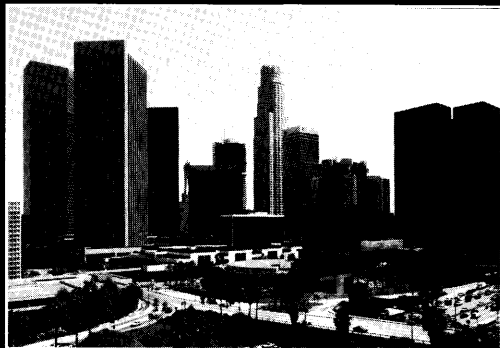
²⁹ Treas. Reg. §31.6011(b)-2(b).

³⁰ Treas. Reg. §31.6011(b)-2(b)(ii)-(iv).

³¹ Treas. Reg. §31.6011(b)-2(b)(iv).

³² I.R.C. §3401(a)(3); Treas. Reg. §31.3401(a)(3)-1;

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- UNEMP. INS. CODE §13009(b); 22 CAL. CODE REG. §4309-2(c).
- ³³ I.R.C. §3402(p); Treas. Reg. §31.3401(a)-3(b)(1); UNEMP. INS. CODE §13024, 13029; 22 CAL. CODE REG. §§4324-1, 4329-1.
- ³⁴ I.R.C. §3102(a), 3121(a)(7)(B); Treas. Reg. §31.3121(a)(7)-1(c)(1), 31.3102-1(b)(2).
- ³⁵ I.R.C. §3306(a)(3); UNEMP. INS. CODE §682; *see also* California Guide, at 1, Are You An Employer?
- ³⁶ \$77 dollars per week, multiplied by 13 weeks, will exceed the \$1,000 per calendar quarter limit.
- ³⁷ I.R.C. §§3101, 3111; This rate consists of 6.2 percent for old-age, survivor and disability and 1.45 percent for hospital insurance. The hospital insurance tax applies to all wages up to \$130,200 for 1992.
- ³⁸ Rev. Rul. 86-14, 1986-1 C.B. 304; Rev. Proc. 81-48, 1981-2 C.B. 623.
- ³⁹ I.R.C. §§3301(1), 3306(b).
- ⁴⁰ I.R.C. §3302(a).
- ⁴¹ UNEMP. INS. CODE §930; 976.
- ⁴² *See* UNEMP. INS. CODE §977; California Guide, at 2, Employer Rate Notice.
- ⁴³ I.R.C. §3302(b); Treas. Reg. §31.3302(b)-1; *see also* Publication 926, at 3, Federal Unemployment Tax (FUTA).
- ⁴⁴ UNEMP. INS. CODE §976.6.
- ⁴⁵ UNEMP. INS. CODE §984.
- ⁴⁶ UNEMP. INS. CODE §984; Employment Development Department Communication, Oct. 25, 1996.
- ⁴⁷ UNEMP. INS. CODE §985; Unempl. Ins. Rep. (CCH) Cal. ¶2530.
- ⁴⁸ *See, e.g.,* Harper, *supra* n. 2; Yoder, *supra* n. 2; Rosen, *supra* n. 2.
- ⁴⁹ *See* text accompanying n. 6, *supra*.
- ⁵⁰ Income tax reporting may become more involved in certain instances. For example, there would be more recordkeeping and payment responsibilities if the domestic requests (and the employer agrees) that income taxes be withheld from wages by submitting a completed Form W-4, Employee's Withholding Allowance Certificate. *See* text accompanying n. 33, *supra*. Another example would be the additional obligations related to the earned income credit that is available to an employee who earns less than \$22,370 in 1992 and supports a dependent child. An employee may request advance payment of the earned income credit by presenting a completed Form W-5, Earned Income Credit Advance Payment Certificate. I.R.C. §32, Treas. Reg. §1.43-2; *see also* Publication 926, at 4, Advance Payment of Earned Income Credit (EIC).
- ⁵¹ Treas. Reg. §31.6302(c)-3(a)(2); *see also* Publication 926, at 3, Reporting and Paying FUTA Tax.
- ⁵² Treas. Reg. §31.6302(c)-3(b).
- ⁵³ Treas. Reg. §31.6011(a)-1(a)(3); *see also* Publication 926, at 3, Reporting Federal Income Tax, Withholding, Social Security and Medicare Taxes.
- ⁵⁴ California Guide, at 1, Quarterly Tax Returns.
- ⁵⁵ Treas. Reg. §31.6011(b)-2(c)(4).
- ⁵⁶ Treas. Reg. §31.6011(a)-3(a); *see also* Publication 926, at 3, Reporting and Paying FUTA Tax.
- ⁵⁷ UNEMP. INS. CODE §13503; 22 CAL. CODE REG. §4353-1(c); *see also* California Guide, at 1, How to Compute Taxes.
- ⁵⁸ I.R.C. §6051(a); Treas. Reg. §31.6051-1; UNEMP. INS. CODE §13050(a); 22 CAL. CODE REG. §§4350-1, 4353-1(b); *see also* Publication 926, at 3, Forms W-2 and W-3.
- ⁵⁹ I.R.C. §21; Treas. Reg. §§1.44A-1, 2, 3, 4; *see also* Form 2441, Child and Dependent Care Expenses.
- ⁶⁰ *See* Rosen, *supra* n. 2.
- ⁶¹ *See* text accompanying n. 6, *supra*.
- ⁶² Even if the household employer were to secure a workers' compensation insurance policy that covers the worker and thereby attempt to "elect" to be covered for this "excluded" employer-employee relationship, it appears that the domestic would still not be precluded from suing the employer in a negligence suit. *See* LAB. CODE §§3351(d), 3352(h), 4151 and 3602; P. PEYRAT, CALIFORNIA WORKERS' DAMAGES PRACTICE §3.27 (1985); 1 S. HERLICK, CALIFORNIA WORKERS' COMPENSATION LAW §2.2 (4th ed. 1990).
- ⁶³ Goldberg v. Pacific Employers Ins. Co., 70 Cal. App. 2d 472 (1945).
- ⁶⁴ LAB. CODE §3602 (commonly known as the "exclusive remedy rule").
- ⁶⁵ LAB. CODE §§3715(b), 3706.