

SS-8 Determination—Determination for Public Inspection

Occupation

01FRW Farm/Ranch Worker

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes

I have read Notice 441 and am requesting:

- ☐ Additional redactions based on categories listed in section entitled "Deletions We May Have Made to Your Original Determination Letter"
- ☐ Delay based on an on-going transaction
- ☐ 90 day delay

For IRS Use Only:**Facts of Case**

The worker initiated the request for a determination of his work status as a laborer on a horse farm, cleaning stalls, fixing fences, etc. in tax years 2011 through 2016. The firm's business is described as a thoroughbred horse farm.

The firm's response was signed by the owner. The firm's business is described as a farm and ranch. The worker performed services as a handy man; in this capacity he did repairs and maintenance, watered trees, cleaned stables, and other odd jobs. The firm stated the worker did not begin working at the farm and ranch until May 2012.

According to the firm, there were no trainings or instructions given. The job assignments were given verbally to clean stables, repair fences and outbuildings, and other general farm work. The worker's services were rendered on the ranch Monday through Friday with hours that varied. The worker determined the methods by which he performed the work; however, any problems or complaints encountered by the worker were directed to the firm for resolution. The worker was required to perform the services personally.

The worker stated he was given specific training and instructions on how to handle horses, fix fences, move pipe, irrigate fields, and stack hay. The job assignments came from the firm and it was the firm that determined the methods by which the worker's services were performed. He concurred that the firm was notified of any problems or complaints. The worker responded that he was required to personally render the services at the firm's location and that any additional personnel were hired and paid by the firm.

The firm provided materials and tools; the worker furnished personal hand tools occasionally. The worker did not lease equipment and did not incur expenses in the performance of the job. The firm indicated the worker was reimbursed for anything he purchased. The firm paid the worker an hourly wage and on a few occasions he was advanced pay. The customers paid the firm. The firm responded that the worker was at risk for a financial loss for damaged tools or equipment; the worker disagreed. Both parties concurred the worker did not establish the level of payment for services provided or products sold.

The firm and worker acknowledged that there were no benefits extended to the worker other than housing and utilities (mobile home on the farm). Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker was a laborer under the firm's business name.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction. The worker was not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business.

CONCLUSION

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.