

SS-8 Determination—Determination for Public Inspection

Occupation

01FRW Farm/Ranch Workers

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 firm is operating a horse boarding and training facility and engaged the worker through an application process to perform horse exercising and maintenance services at the firm's facility. The firm's designated management provided the worker with training and instructions on performance of services. The firm's designated management assigned the worker services to perform in the morning. The firm required the worker to contact the firm's management regarding resolution of problems or complaints. The worker performed services part-time at the firm's facility. The firm required the worker to perform the services personally. The firm or firm's manager hired substitutes or helpers if needed and the firm paid them.

The firm provided everything the worker needed in order to perform the assigned services. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the customers paid the firm. The firm carried workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business. The firm determined the level of payment the customers paid for services and lodging and the level of payment to the worker for providing services.

There were no formal contracts between the firm and worker. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval to do so. The worker indicated no similar services were performed for others while performing services for the firm. The worker did no advertising as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had no financial business investments and no control over profit and loss due to significant business capital outlays being made. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and the customers paid the firm. The firm determined the level of payment for boarding and training services the worker performed and the customers paid. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The firm indicated the worker did perform similar services for others while performing services for the firm and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did not advertise to the public as being engaged in a business. The worker personally performed part-time services for the firm's business under the firm's business name on a regular and continuous basis over several months at the firm's place of business.

Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.

Section 3121(g)(1) of the Internal Revenue Code, relating to the FICA, provides that the term "agricultural labor" includes all services performed on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and furbearing animals and wildlife.

Section 31.3121(g)-1 of the regulations includes within the definition of the term "farm," stock, dairy, poultry, fruit, furbearing animal, and truck farms, plantations, ranches, nurseries, ranges, orchards, and such greenhouses, and other similar structures as are used primarily for the raising of agricultural or horticultural commodities.

However, it is held that services performed by an employee of a company in connection with the racing of horses and exhibiting them at horse shows are not "agricultural labor" within the meaning of section 3121(g)(1) of the Federal Insurance Contributions Act and section 3306(k) of the Federal Unemployment Tax Act. This conclusion is also applicable for purposes of the Collection of Income Tax at Source on Wages (chapter 24, subtitle C of the Code).

Under section 3121(a)(8)(B) of the Internal Revenue Code, with exceptions not material here, when the cash remuneration paid to an individual farm worker in a calendar year is \$150 or more, or the employer's expenditures for agricultural labor in the year equals or exceeds \$2,500, the income is subject to FICA.

Section 3306(c)(1) of the Code provides in effect, that with exceptions not material here, remuneration paid to individuals for agricultural labor is not subject to FUTA taxes unless the agricultural labor is performed for a person who, during any calendar quarter in the calendar year or the preceding calendar year, paid remuneration in cash of \$20,000 or more to individuals employed in agricultural labor; or on each of some 20 days during the calendar year, each day being in a different calendar week, employed in agricultural labor for some portion of the day, 10 or more individuals. For further information regarding agricultural employees, you may wish to obtain Publication 51, Agricultural Employer's Tax Guide.

Based on the autonomy of the working relationship we have determined the worker to have been an employee under common law.