

SS-8 Determination—Determination for Public Inspection

Occupation

Construction/Technical Services/Trades

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 an agricultural farm. The worker was engaged to perform services as a farm hand, responsible for basic farming operations and services. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The firm's farm manager provided the worker with verbal instruction on how to perform the services. Work assignments were received from the farm manager, who also determined the work methods by which to perform the services. Work related problems were initially reported to the farm manager, and then to the firm's owners for resolution purposes. The firm required the worker to perform the services personally, at its premises. The firm required the worker to provide timesheets showing the number of hours worked, and services performed.

The firm provided the worker with the equipment, tools, and supplies needed to perform the services. The worker did not provide any items, and did not incur work related expenses. The firm paid the worker on an hourly wage basis for his services, as established by the firm. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The firm covered the worker under workers' compensation insurance. The firm did not make employment benefits available to the worker. The worker did not perform similar services for others. There was no information provided to support that the worker advertised as being available to perform similar services for others while engaged by the firm. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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.

Under section 3401(a)(2) of the Code the term “wages” does not include remuneration for services that constitute agricultural labor as defined in section 3121(g). However, beginning in 1990, the Revenue Reconciliation Act of 1989 modified that rule to provide that income tax withholding is applicable if the remuneration is subject to FICA withholding.

“Wages” for services other than “agricultural labor” are not to be reported on Form 943. Such wages are to be reported on Form 941 Employer’s Quarterly Federal Tax Return. However, if you file Form 943 and pay wages to household workers who work on your for-profit farm, you may include the wages and taxes of these workers on Form 943. If you choose not to report these wages and taxes on Form 943, or if your household worker does not work on your for-profit farm, then they should be reported on Schedule H, which is filed with your individual income tax return. Schedule H is also used to report FUTA taxes for household employees.

Accordingly, if only part of an employee’s services constitute “agricultural labor,” or if some of an employer’s workers perform services which constitute “agricultural labor” and others do not, it is necessary for the employer (1) to segregate the “wages” for “agricultural labor” from the other “wages” paid; (2) to file Form 943 reporting the Federal Insurance Contributions Act taxes due with respect to the “wages” for “agricultural labor;” and (3) to file Form 941 reporting the Federal Insurance Contributions Act taxes due with respect to the “wages” for other “employment.”

Therefore, in this case, as the employer of the worker, you are liable for FICA and FUTA taxes for the worker, absent the application of the foregoing limited exceptions. Whenever you pay the employee’s tax for federal income, social security and Medicare in lieu of collecting it from the employee, this amount must be included in the employee’s wages for income tax purposes. However, they are not counted as social security and Medicare wages or as federal unemployment (FUTA) wages.

For further information regarding agricultural employees, you may wish obtain Publication 51, Agricultural Employer’s Tax Guide.