

SS-8 Determination—Determination for Public Inspection

Occupation

01FRW LABOR

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 the firm's farm in the summer planting, tilling, and harvesting and as a truck driver in the winter hauling grain, one to three loads a day depending on the distance. He did work in the shop where the firm stored the equipment and did basic maintenance and repairs so that equipment was ready to go the next time it was used. He was issued Form 1099-MISC for tax years 2016 to 2019. He noted there was no livestock. The firm's business is described as a farm.

The firm's response was signed by the owner/farmer. The firm's business is farming. The worker helped with planting and harvesting, service and maintenance of the farm equipment, and hauling grain to the firm's customers, with no set schedule.

The worker responded that he was not given training and instructions since he was familiar with the equipment. The job assignments came from the firm daily, and it was the firm that determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker kept a daily log book for truck driving and tracked his hours on a calendar in the shop for other tasks. The worker performed the services personally at the farm, in the shop, and on the road. Any additional personnel were hired and paid by the firm.

According to the firm, there was no training provided. The worker had flexibility to perform the tasks; he knew what needed to be done and completed them. The worker determined the methods by which he performed the tasks. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker provided verbal updates, as needed. The services were rendered at the farm shed and farm property according to worker's schedule. The worker was required to perform the services personally.

The worker stated the firm provided tractors, drills, combines, and truck; and, he furnished nothing. The worker did not lease equipment, space, or a facility. The firm paid the worker an hourly wage. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship. The worker did not establish the level of payment for services provided or the products sold.

The firm response acknowledged the firm provided farm equipment and tools; and, the worker furnished tools, as well. The worker did not lease equipment, space, or a facility. The worker was contract labor and he charged for the hours worked. The firm stated the worker refused to invoice the firm for maintenance; the worker would pick up the needed parts and the firm paid for the parts. The worker wasn't under contract for regular maintenance; it was to change oil, replace chains, fix tin, otherwise the equipment would have to go to a dealership; the firm noted the worker was a good welder. The firm stated the worker posted his hours on a calendar for his benefit, not the firm's. The firm paid the worker whatever was due him; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. It is unknown to the firm if the worker was/was not at risk for a financial loss in this work relationship. The firm indicated the worker established the level of payment for services provided and/or products sold.

Both parties concur there were no benefits extended to the worker; the worker stated there was an occasional bonus. Either party could terminate the work relationship without incurring a liability or penalty. The firm indicated the worker was performing same or similar services for others during the same time frame; the worker disagreed. He stated the majority of his day was on the farm working with the firm's parents (who drove trucks), the firm's son, and other workers. The worker resigned.

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.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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 and that its contractual obligations were met. 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

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.

Please see www.irs.gov for more information including Publication 4341 Information Guide for Employers Filing Form 941 or Form 944 Frequently Asked Questions about the Reclassification of Workers as Employees and Publication 15 (Circular E) Employer's Tax Guide.