

SS-8 Determination—Determination for Public Inspection

Occupation 01FRW.9 Farm/RanchWorker	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is in the chicken farm business and plant nursery business operation. The firm engaged the worker to perform various cleaning and maintenance services at a chicken farm and occasionally at a plant nursery business. The firm provided the worker with instructions on jobs needed to be performed and allowed the worker to determine his own work schedule. The worker was required to perform the services according to a designated farm serviceman's report who performed inspections weekly at the chicken farm location. The worker was not required to perform the services personally. The worker provided substitutes or helpers if needed. The worker would pay any substitutes or helpers out of the payment received from the firm for the services.

The farm provided everything needed by the worker to perform the services. The worker did not lease equipment or space. The worker did not incur any on-going significant business expenses. The firm paid the worker a set amount every 2 weeks. The firm was paid through the firm's customers. The firm determined the level of payment for the services. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The worker did not perform similar services for others or advertise as a business to the public. The worker was represented under his name to the firm's customers per the firm, the worker indicated employee. 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. In this case you engaged the worker to clean and maintain a chicken farm and occasionally a plant nursery. You assigned the worker services that needed to be performed and allowed the worker to establish his own schedule to perform the services. A weekly farm inspection serviceman determined the methods used by the worker to perform the services. You did not require the worker to perform the services personally but you expected the worker to provide substitutes or helpers if needed and pay them. You determined directly and indirectly through designation what, how, when, and where the worker performed the services. These facts evidence behavioral control by you over the services performed by the worker.

Everything the worker needed to perform the services was provided. The worker did not lease equipment or space. The worker did not incur any on-going significant business expenses. You paid the worker a set amount every 2 weeks. Your customers paid you. You determined the level of payment for the services. The worker could not suffer any economic loss and had no financial risk with regard to the performance of the services. These facts evidence financial control by you over the services performed by the worker.

There were no contracts between you and the worker. The worker did not perform similar services for others while performing services for your business operations. The worker did not advertise to the public as being engaged in a business. The worker personally performed services for your business at locations determined by you on a regular and continuous daily basis under your business name over a period of several months. Both you and the worker 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 fur bearing animals and wildlife. Section 31.3121(g)-1 of the regulations includes within the definition of the term "farm," stock, dairy, poultry, fruit, forbearing 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.

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

The employment tax liabilities for income tax withholding and FICA generally also apply to resident and non-resident aliens, except that non-resident aliens may have an exception depending on their immigrant status. FUTA may also apply to the income earned by aliens, even when the income is not subject to FICA tax. However, agricultural workers that are here on temporary H-2A visas are usually exempt from social security and Medicare taxes, whether they are resident or non-resident aliens. Also, their income is not considered "wages" for withholding or the use of Form(s) 943 and W-2. If your worker is a resident or non-resident alien, and you need additional information, you may wish to obtain Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities.