

**SS-8 Determination—Determination for Public Inspection**

Occupation 01FRW.11 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 payer is an individual who is a farmer which engaged the worker as a farm laborer/farm hand in 2013. There was no written agreement between the parties.

According to the worker the payer provided training, instructions, and supervision as to the details and means by which the worker was to perform the services. He provided services to the payer daily from morning until around 3:00 PM and received regular weekly remuneration for his services. His duties included picking peanuts and cotton and feeding the cows on the payer's farm. The payer determined the methods by which the assignments were performed. The payer was responsible for problem resolution. He performed the services on the payer's premises. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker was required to perform the services personally. The worker worked exclusively for the payer. The payer hired and paid any substitutes or helpers.

The payer furnished the worker with the farm, the crops, the cows and all equipment necessary to provide his services, at no expense to him. The worker did not lease equipment. The payer determined the fees to be charged to its customers. The worker did not incur business expenses while performing services to the payer. The worker was paid a daily wage. The compensation was given to the worker on a weekly basis. The payer's customers paid the payer. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the payer. He did not advertise his services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. He was required to perform the services under the name of the payer and for the payer's clients. The payer stated the worker performed services part-time on the firm and was paid regardless if he worked a full day or not, even if it was raining the worker was still paid the same amount. According to the payer the worker did not want taxes taken out of his pay so that is why he was issued a Form 1099-MISC instead of a Form W-2. The payer stated the worker requested a Form W-2 but was denied because the taxes were not withheld from his pay. The payer's contention that the worker was treated as an independent contractor pursuant to an agreement for him to be treated as such is without merit. It is the firm's responsibility to treat workers according to federal employment tax guidelines and law. Neither the firm nor the worker has the right to decide whether the worker should be treated as either an independent contractor or an employee. Worker status is dictated by the characteristics of the work relationship. If the work relationship meets the federal employment tax criteria for an employer/employee relationship, federal tax law mandates that the worker be treated as an employee. The relationship between the parties ended when the payer terminated the worker.

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**Analysis**

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The worker performed personal services on a continuous basis for the payer. Work was performed on the payer's premises, on a regular schedule set by the payer. The payer provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid weekly. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.