

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

Occupation 01FRW.13 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 a farming business. The firm engaged the worker through a referral to perform part-time as needed farm labor services at the firm's farm. The firm provided the worker with hands-on training. The firm assigned the worker jobs to perform and determined the methods to use to perform the services. The firm required the worker to contact the firm regarding any problems or complaints for resolution. The worker worked part-time as needed on variable schedule. The worker performed the services personally. The firm hired and paid substitutes or helpers as needed.

The firm provide farm equipment, materials, and supplies. The worker did not lease equipment or incur any business expenses. The firm paid the worker an hourly wage. The firm was paid through the firm's customers resources. The worker determined the level of payment for the services and the firm verbally agreed to it. The firm carried workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk.

There were no contracts. The worker indicated there was a verbal agreement. The worker did not perform similar services for others or advertise to the public as being engaged in a business. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability.

The firm paid the worker as an employee in 2013 and then issued Form 1099-MISC for the same services in 2014. The services remained substantially the same. 2015 year information was not provided but the relationship had not yet ended was indicated by both firm and worker.

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## Analysis

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The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

Therefore it is determined that the worker was an employee during the entire working relationship at issue.

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, fur bearing 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.