

SS-8 Determination—Determination for Public Inspection

Occupation 01PLW.27 PlantLandMaintenance	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

Information provided indicated the firm is a nonprofit organization that ran an after school program for students. The worker had been retained by the firm as a gardener for tax years 2009 through 2012. The firm reported the income on Form 1099-MISC. The worker requested the determination, as he felt due to the direction and control of the firm, he was misclassified as an independent contractor.

The firm provided a copy of the contract. the contract stated he was to oversee the overall care and development of [REDACTED]. He was to provide age appropriate garden and tree planting activities for the children enrolled in the after school program. All services were performed under the direction of the Executive Director. In collaboration with the [REDACTED] Staff, the worker was to plan and coordinate time in the garden for staff, students and community members. He was to prepare a garden curriculum for review and approval of the firm, that provided opportunities for students to enhance educational goals in various areas. curriculum must meet the State of [REDACTED]. He was required to construct and maintain the gardens and compost bins. He was to work closely with the Executive Director, Project Coordinators, [REDACTED] and other program participants. He was to supervise assigned staff. He was to attend weekly planning meetings and other weekly/monthly school/ neighborhood/community meetings or events (some during evening hours) as requested by the Site Facilitator and Executive Director. This contract was for tax year 2009 was to expire June 1, 2010. No copies of additional contracts were provided for the 2010 through 2012 periods. It stated the firm would provided all equipment, tools, and supplies required to perform the above services. Five hundred dollars was made available to spend on garden expenses, any approved out of pocket expenses would be reimbursed by the firm. He was to be paid Fifteen dollars per hour for a maximum of One thousand dollars per month. He was expected to work sixteen hours per week from two-thirty pm to five-five-thirty pm. He was expected to spend three to four hours per week with students.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker’s activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

ANALYSIS

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.

The establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

Analysis

A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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.

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

Based on the above analysis, 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. The first statement of the "contract" states, the worker is to perform his services under the direction of the Executive Director. All lesson plans had to be approved by the firm. All out of pockets expenses had to be approved and were reimbursed. He was required to attend various meetings. He was paid by the hour, and the firm provided all equipment and supplies, indicating he had no financial investment or opportunity for profit or loss.

For the 2009-2012 tax year(s) in question, it is possible that the statute of limitations has expired for the assessment of taxes in this matter. If so, it will not be necessary for you to amend your return(s). Internal Revenue Code (IRC) section 6501(a) provides that the statute of limitations for assessment generally expires three years from the due date of the return, or three years after the date the return was actually filed, whichever is later. IRC section 6501(b)(2) provides that for certain employment tax returns, the three years would begin April 15 of the following year for which the return was due. IRC section 6511(a) provides that a claim for credit or refund of an overpayment shall be filed within three years from the date the return was filed, or two years from the date the tax was paid, whichever expires later.