

SS-8 Determination—Determination for Public Inspection

Occupation 02AAD Art Curator	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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

Information provided for this case shows the firm is a hotel, and the worker was engaged to perform curatorial services. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker did not receive specific training or instructions on how to perform her services. She received a job description outlining the services she was to perform. In this capacity, the worker researched, solicited, and acquired artwork on consignment basis for the firm. She generated forms and agreements, provided didactic materials, and procedural materials. The worker installed and removed artwork, packaged artwork, and acted as a liaison between artists and galleries. The worker did not have a set routine. Her services were performed on an on call basis. She was required to perform her services personally, from her home office, at the firm's hotel, and at art galleries and studios. The worker determined her work methods, and she was required to report problems and complaints to the firm for resolution purposes.

The firm provided the paint, spackle, and picture hanging supplies the worker needed to perform her services. The worker provided picture hanging hardware, tools, packing materials, office supplies (ink, paper, labels) and a printer. The worker incurred expenses for those items, and for travel expenses (mileage and fuel). The firm reimbursed the worker for expenses related to the hanging hardware, packing materials, office supplies (labels). The firm paid the worker on an hourly wage basis for her services. The worker did not incur economic loss or financial risks related to the services she performed for the firm.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. There was no information provided to support that the worker performed similar services for others while engaged by the firm. The worker did not advertise as being available to perform similar services to others while engaged by the firm. The work relationship was continuous, and could have been terminated by either party at anytime without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker performed services for the firm, following its instructions, routine, and schedule. The worker's services were performed personally at the firm's location, the worker's residence, and at art galleries and studios. The worker used supplies provided by the firm, and she represented the firm's business operations in the performance of her services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The firm reimbursed the worker for work related expenses. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform her services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that she performed her services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov