

SS-8 Determination—Determination for Public Inspection

Occupation

02ABT Accountants/Bookkeepers/Tax Preparers

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ 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**

The firm is a digital marketing business that offers such services such as website building, social media, and strategy. The worker was engaged as an senior accounts manager, to manage client accounts, (create deliverables, edit websites, and work directly with each client as a representative of the firm). The firm treated the worker status as non-employee compensation, 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 received training in how to perform the services, how to respond to clients, how to manage and create client documents and contracts. The firm would obtain new clients, and would work collectively (the firm's CEO, CTO, and worker) to determine who would work on what projects; The worker usually worked on the bulk of the campaigns. The firm and worker both determined the work methods by which to perform the services. Problems and complaints were reported to the firm for resolution purposes. The worker was required to perform her services personally, from her residence, and from locations designated by the firm.

The firm provided the office equipment, computer, and client contacts. The worker provided her own laptop and transportation. The worker incurred expenses for travel. The firm paid the worker on an hourly wage basis, plus commissions, as payment for her services. Clients paid the firm for services rendered. Economic loss and/or financial risks related to damage/loss to the equipment used to perform the services.

Workers' compensation insurance was not carried on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did she advertise her services to others outside use of the firm's business cards. The work relationship was continuous as opposed to a one-time transaction.

Analysis

The 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's equipment, tools, and supplies and 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 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 his/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