

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 worker requested a determination of work status for services performed for the firm as an accountant and CFO. The firm is an automotive repair company and responded to our request for information as follows:

The firm is in the business of auto repair. The worker was engaged as an accountant/CFO to run monthly, quarterly and yearly reports and to give the firm monthly business costs. The firm feels the worker was correctly treated as an independent contractor because he works for several companies, he made his own hours, and changed a rate he set and billed the firm on the worker's own business invoices. The firm did not give the worker any training. He was engaged to create structure in the business and made his own decisions. He determined his own methods. The worker contacted the owner if problems occurred. The worker told the firm what was needed for taxes. No other reports were required. The worker performed his services from his own home and he chose when to work. The firm did not provide anything. The worker performed his services from his home office. The worker charged different rates depending on what services he was providing. The worker decided the amounts he would charge the firm. The worker received no benefits. Either party could have terminated without liability.

The firm stated that the worker referred to the firm as one of his clients. He marketed himself as providing financial consulting services to various companies. The worker set up the firm's payroll, worker's compensation and records and recorded himself as a vendor. He controlled his own means and methods. The worker had the firm purchase a software program so the worker had access to the firm's financial records remotely from his home. Periodically the firm owner would meet with the worker, usually from his home, to go over the firm's financial status and give advice. The meetings were set up around the worker's schedule as there were conflicts with the worker's other clients.

The worker stated that he believes he should have been treated as an employee because he was controlled by the owners of the firm. The worker state he performed his services approximate 10 hours per month. The majority of his services were performed from his home or at business dinners.

The worker's LinkedIn profile show he offered these services to the public and that he advertised the CFO title to four businesses at the same time and offers services in management consulting.

Analysis

We have applied the law, regulations, and principles as cited above 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, therefore, rests on the weight given to the factors, keeping in mind that no one factor is determinative of a worker's status. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed.

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 these factors.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm did not retain the right to change the worker's methods and to direct the worker. The worker was given a title of CFO. Generally CFO's are considered officers of corporations and are considered employees. An exception can be made when the services performed are minimal. The worker performed his services approximately 10 hours per month. He was engaged for his expertise and the firm did not control the means and methods of his services. The firm was only interested in the outcome. The worker did not dedicate substantial time and effort to the position and therefore his position meets the exception.

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 invested capital or assumed business risks, and therefore, did have the opportunity to realize a profit or incur a loss as a result of the services provided. Evidence shows that the firm was only one of the worker's clients and the worker spent minimal time performing services for the firm. The worker operated from a home office, where he also offered his services to others. The worker set his own prices and billed the firm different rates based on what services he performed.

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 engaged in an independent enterprise. The services the worker performed were independent in nature. The worker represented himself as independent. The worker set up the firm's payroll and benefits for the firm's employees and listed himself as a vendor for payment. This shows that the worker considered himself an independent contractor and not an employee.

CONCLUSION

Based on the above analysis, we conclude that the worker is an independent contractor and not an employee of the firm. Accordingly, the worker's income is not subject to the Federal Insurance Contributions Act tax (FICA), Federal Unemployment Tax Act (FUTA), or the collection of income tax at the source of wages.

This determination is based on the application of law to the information presented to us and/or discovered by us during the course of our investigation; however, we are not in a position to personally judge the validity of the information submitted. This ruling pertains to all workers performing services under the same or similar circumstances. It is binding on the taxpayer to whom it is addressed; however, section 6110(k)(3) of the Code provides it may not be used or cited as precedent.