

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 provided their clientele with accounting services. The firm engaged the worker as a tax preparer. The worker went through an interview process with the firm prior to when the firm engaged the worker. There was no written agreement between the two parties.

The worker stated he received instructions on the firm's software, administrative tasks and janitorial duties. The worker received his assignments from the firm. The firm stated the worker performed his services independently and the worker stated the firm determined how the assignments should be performed. The worker stated he relied upon the firm to resolve his problems and complaints. The worker stated he was required to submit times sheets. The firm stated the worker gave him copies of the papers he prepared. The worker stated he had a schedule from 11 a.m. to 5 p.m. or as needed by the firm. The worker performed his services at the firm's location. The worker stated he was required to meet with the firm regarding his daily assignments. The worker was required to perform his services personally.

The firm provided all supplies, equipment and materials for the worker to perform his services. The worker was paid on an hourly basis. The customers paid the firm directly for the services they received. The worker stated the firm established the level of payment for the services received.

The worker received no benefits. Either party could terminate the relationship without incurring a liability. The firm stated the worker performed similar services for others at the same time he performed services for the firm and the worker stated he did not perform similar services for others. The worker was required to sign a non-compete agreement. The worker stated he was represented as an employee and the firm stated the worker was represented as a sub-contractor. The work relationship ended as the firm closed their business.

Analysis

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.

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. In the instant case, the firm interviewed the worker prior to engaging the worker to make sure the worker had the qualification he needed for his business as an employer. The fact the worker performed tax preparing services for the firm's clientele at the firm's accounting business this demonstrated the worker's services were integrated into the firm's daily operations.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In the instant case, the worker was required to perform his services personally which demonstrated the firm was interested in the methods used by the worker. Control was further demonstrated when the firm required the worker to fill out time sheets for the hours he performed his services.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. In the instant case, the worker was paid by the hour.

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. In the instant case, the worker could not suffer a significant loss as operating his own business. It was the firm that had the significant investment as the firm provided the worker with the location, equipment, materials and office supplies the worker needed to perform his services. The fact the firm was responsible to collect the amount the firm charged their customers demonstrated the firm was the entity that could suffer a significant loss for lack of payment in services rendered.

The worker was an employee according to common law. The information provided by both parties demonstrated the worker performed services for the firm under the firm's business name for the firm's clientele. The firm controlled the worker by giving the worker his assignments. The fact the worker relied upon the firm to resolve his problems and complaints this showed the worker had a dependency upon the firm as an employer. It was the firm that had the financial investment as the firm provided the worker with the equipment, supplies and materials for the worker to perform his services. It was the firm that could suffer a significant loss as the firm set the rate to charge their clientele and was responsible to collect that amount from their clientele while the worker was paid an hourly rate according to the hours he performed services. The fact the worker prepared tax preparations for the firm's accounting business demonstrated the worker's services were integrated into the firm's daily operations.

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.

Please go to www.irs.gov for further information.

Firm: Publication 4341

Worker: Notice 989