

SS-8 Determination—Determination for Public Inspection

Occupation

02ABT Bookkeeper

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 operates a business which changed in 2017 and the worker was engaged in the firm's prior business as an employee and as an independent contractor in 2017. The worker performed bookkeeping services for both the firm's businesses as well as store clerk services in prior year. In 2017 the bookkeeping services were performed on the worker's schedule part time due to the worker had another full time job.

The firm provided training on performance of bookkeeping for the firm's business in the prior year. The firm assigned the worker jobs to perform. The firm and worker determined the methods used to perform the services. The firm required the worker to contact the firm regarding problems or complaints for resolution. The worker was required to provide the firm with bookkeeping reports. The firm allowed the worker to perform the services on his own schedule around his full time job. They disagreed on where the worker performed the services. They disagreed on if the firm required the worker to perform the services personally. Both parties agreed no substitutes or helpers were hired or paid.

The firm provided a computer and worker provided nothing. The worker did not lease anything or incur any business expenses. The firm paid the worker an hourly wage and the firm was paid through the firm's customers resources. The firm did not carry workers' compensation insurance. The worker did not determine the level of payment for the services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and worker. The firm did not provide the worker with any benefits. The firm did not know if the worker performed similar services for others or advertised to the public as being in a business. The worker indicated no similar services were performed for others and he did not advertise as being engaged in a business to the public. Both parties retain the right to terminate the working relationship at any time without incurring any liability.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring on going business capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker an hourly wage and the firm received business income through customer resources. The firm determined the level of payment for the services performed by the worker. These facts evidence financial control by the firm over the services performed by the worker.

There were no contracts between the firm and the worker. The worker did not perform similar services for others or advertise as a business to the public. The worker personally performed services for the firm's business on a regular and continuous part-time basis over several months. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.