

**SS-8 Determination—Determination for Public Inspection**

Occupation 02ABT.7 Accounting/TxPrepWkr	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

**Facts of Case**

Information provided indicated the firm is a transportation collection agency, hired by trucking companies to collect past due accounts receivable. The worker had been retained by the firm in 2012 and 2013 as a collections investigator. The firm reported the income on Form 1099-MISC.

The firm stated the “employee” was a non-equity partner. The worker provided collection services as a non-equity partner. The firm indicated the worker had been given limited instruction by [REDACTED]. Work assignments were distributed depending on availability. The worker determined how the work was performed, however, she would report to [REDACTED] if she had any issues. The firm stated work had been performed on firm premises or at home or wherever internet access could be had. The firm stated the worker was free to hire helpers, she would have paid them if she did. The firm stated they provided a computer. She was paid on a commission basis. The clients paid the firm directly for services. Either party could terminate the work relationship without incurring a penalty or liability.

The firm provided a copy of the January 2012 “Of Partner Agreement (Independent Contractor and Partnership).” The agreement was for a twenty-four month period, good until January 12, 2014. The partner’s base compensation was to be Two Thousand Five Hundred Eighty dollars (\$2580.00) Per month as advance of those months commissions (\$31,200 annualized), payable weekly. The partner would receive an amount equal to the fee structure of the partner’s net collection fee (gross collections minus client remittance) for the calendar month. The Partner agrees she had no ownership interest in the work in process, accounts receivable or goodwill of the firm. She agrees to assist the firm in collection, if she leaves the firm before or after the term, on the unpaid work in process and unpaid accounts receivable from those clients for which she was the original source of share source salesman. She agreed not to directly or indirectly compete with the business. If elected to do so, she would be covered under the firm’s medical, disability, life and other insurance plans at half the firm’s cost. She was not required to contribute capital to the firm, nor would she have voting rights. She would be able to participate in discussions and meetings, except those where only Equity Partners could participate. The firm reserves the right to terminate its’ agreement without notice.

The worker stated she was provided with one week of training when hired. The manager gave all work assignments. The worker indicated all work was performed on firm premises from eight to four, with one hour for lunch. Staff meetings were scheduled during regular hours, attendance was mandatory. She indicated she was required to perform services personally. The worker indicated she was guaranteed eight hundred per week (\$800.00). She agreed the customer paid the firm. She indicated she was given paid holidays and insurance benefits. Either party could terminate the work relationship without incurring a penalty or liability.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.” Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker’s activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your 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.

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## Analysis

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We have applied the above law 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, 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.

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 the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment. The worker was referred to as a partner of the firm. The firm's website for 2012 and 2013 lists her as a member of their staff as an investigator. The firm provided her with training, the firm controlled the work assignments. All work was performed under the firm's business name and reputation.

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 did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. Per the contract, the worker was guaranteed a set salary, with variations dependent on the amount collected by the firm. The clients paid the firm directly for the services received. The services were performed on the firm premises, utilizing the firm's equipment and supplies.

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 not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## CONCLUSION

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.