

SS-8 Determination—Determination for Public Inspection

Occupation

02COL Collectors

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 submitted a request for a determination of worker status in regard to services performed for the firm from September 2018 to current as a bail bond agent. The firm issued the worker Form 1099-MISC for 2018. The worker filed Form SS-8 as they believe they received Form 1099-MISC in error. There was no written agreement between the parties.

The firm's response states it is a bail bond agency. The work provided by the worker was getting people out of jail. The worker was requested to fill out the appropriate state-required paperwork and bail individuals out of jail. The firm states that it did not provide supervision or direction.

The firm states that they did not provide the worker with any training beyond how to fill out a jail bond. The worker received job assignments from the firm when the firm received a phone call from the criminals. The firm owner determined the methods by which job assignments were performed. The worker was not required to provide the firm with any reports. The worker's schedule depended upon when someone would call for assistance from the jail. The worker provided services for the firm at the firm's premises and wherever they could bond someone out of jail. There were no meetings required of the worker. Helpers or substitutes were not applicable to the work relationship. The worker states that they received instruction from the firm on how to properly complete paperwork for an individual's release from jail. The worker received job assignments daily via text message or phone call from the firm. The owner of the firm or their designee would determine the methods by which these tasks were performed and assumed responsibility for any problem resolution necessary. The worker was required to provide signed bail bond agreements to the firm. The worker would arrive at the office at 8am Monday through Friday and await instruction on where to go for their job assignments. The worker performed services at the firm's office premises. The worker was required to attend staff meetings and perform all services personally. If helpers or substitutes were required, the firm would hire and pay them.

The firm states that they provided all bail bond paperwork for the state. The worker did not have to provide anything or lease any space, equipment, or facilities. The worker did not incur any expenses during their job duties. The worker was paid commission by the firm with no access to a drawing account for advances. Customers would pay either the firm or the worker. The firm was unaware of any economic loss or financial risk that the worker would be exposed to. The worker states that the firm provided office space, office supplies, and forms. The worker did not have to lease space, facilities or equipment. The worker had only transportation and other miscellaneous expenses. The worker was paid commission and an hourly wage. Customers could either pay the firm or the worker. If the worker was paid by the customer, they paid the entire amount to the firm. The firm did not carry worker's compensation insurance on the worker. The worker was exposed to a possible loss of life. All payments for the firm's services were determined by the firm owner or their designee.

The firm states that they did not offer any benefits to the worker. The firm considered the worker not to be an employee. The worker was not a member of a union. The worker did not advertise their services to the public. The worker states that the firm provided them with personal days as a job benefit. The relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for any other firm during the work relationship. There were no non-compete agreements in place between the parties. The worker states that they were a member of a union. When client paperwork was completed by the worker, it was turned into the firm's office and entered into the computer system. The worker was represented by the firm as a bail bond agent working for the firm. There is no termination of the work relationship as the worker is currently performing services for the firm.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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 this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation of bail bonds. The firm provided work assignments by virtue of the customers served, required the worker to report on services performed, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. In this case, the worker did not invest capital or assume business risks. 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. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.