

SS-8 Determination—Determination for Public Inspection

Occupation 02CON.30 Consultant/Advisor	Determination: <input type="checkbox"/> Employee <input checked="" type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The worker initiated the request for a determination of his work status as an associate consultant from March 2011 to December 2013 and as a senior consultant December 2013 to June 2016. The worker stated that there was a hierarchy of consultants with the firm owner being the principal consultant; when the firm made arrangements with another consultant, the worker became the senior consultant. In this capacity, he executed consulting contracts for the firm's clients and co-wrote and co-produced an annual book-length state-of-the-industry on AM industry (AM, aka 3D printing), and represented the company at client companies, conferences, and exhibitions. His prior affiliation with the firm from January 2000 to March 2011 was sporadic moonlighting on a finite number of projects at which time he was working full-time somewhere else. He stated that after March 2011 he worked exclusively for firm. The firm's business is described as consulting services in additive manufacturing and rapid product development.

The firm's response was signed by the firm's president. The firm's business is described as providing technical, market, strategic advice on new developments and trends in rapid development, additive manufacturing, and 3D printing. The worker performed services of contract writing, editing, and consulting on a project-by-project basis. He served as an associate consultant and later a senior consultant. The firm indicated there was no difference between an associate consultant and a senior consultant. The 'label' was to raise the status of the worker when meeting with clients because of their long association and to make it appear that the worker had more status than other consultants engaged by the firm.

Both parties acknowledged that there were no agreements in place other than the 2010 Non-compete agreement and the Confidentiality Agreement.

According to the worker, there was specific training and on-the-job instructions from the firm. The job contracts were assigned to worker; the firm determined the methods by which the worker's services were performed. The worker indicated that any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered based on the due dates for projects, with the firm prioritizing which project to work on first or which aspect of a project to prioritize. For larger projects the firm and worker had weekly telephone calls for status updates on work in-progress. The worker stated he was required to perform the services personally; and, any additional personnel were hired and paid by the firm.

The firm responded that brief and basic project direction was given; but, there was no formal instruction or training provided to the worker. The worker and firm discussed and agreed upon the methods to be used to perform work assignments. Informal updates were provided to the worker by email. The worker determined his hours/schedule; the firm believed the worker worked from a home office. The worker was not required to attend meetings although there were frequent telephone calls between the parties. The firm indicated the worker was not required to perform the services personally; the firm was not made aware of any substitutes or helpers.

The worker indicated the firm provided the digital camera, sample of 3-D printed parts, and business cards. The worker furnished his computer, printer, modem, router, paper and office supplies; and, stated he did not lease equipment, space, or facilities and did not incur expenses in the performance of the job. The worker stated that the parties negotiated an hourly rate, and towards 2015 he actually bid a few projects and was paid the fees, as agreed. The clients paid the firm. The worker was reimbursed for travel, lodging, and meals when he traveled to client sites. The worker stated he was not at risk for a financial loss in this work relationship; the firm established the level of payment for services provided or products sold.

The firm provided the client information to the worker. The worker furnished nothing; normal office expenses were incurred, but the firm did not reimburse the worker for anything. The worker was paid an hourly rate that was tied to a project or a fixed fee depending on the nature of the project. The clients paid the firm. The firm concurred that the worker generally traveled to a client location. As part of the contract with the firm, the client would incur the expense for travel, lodging and meals and requested the receipts associated with the trip. The firm stated the worker's financial risk was possible (office space, computers, files, documentation, etc.) and indicated the worker determined the level of payment for services rendered.

Analysis

Both parties acknowledged that no benefits such as health insurance, paid vacations, sick pay, or paid holidays were extended to the worker; however, both noted that bonus was paid to the worker. The firm stated that it was more as a reward for meeting a deadline and because of the long relationship between the parties. Either party could terminate the work relationship without incurring a liability or penalty. The worker stated he was not performing same or similar services for others during the same time frame; the firm disagreed. Due to the sensitivity of client and firm's intellectual property, the worker was asked to sign non-compete and confidentiality agreements. The firm and worker agreed that the worker elected to stop working with the firm.

The firm and worker provided copies of the the Forms 1099-MISC for 2011 through 2016. In 2011 the worker was issued two (2) forms: one was issued to the worker for the first few months of the work arrangement and the second pay document was issued to the worker/his business [REDACTED]. In subsequent years the pay document was issued to the worker and his business [REDACTED].

The worker stated that when he realized in 2011 that he was an Independent Contractor, he obtained the business name, EIN, business account, etc.. He provided copies of the invoices he generated under his business, with the checks issued to his business, and deposited into his business account.

The firm responded with copies of invoices from the worker and the checks issued to the worker's business, indicating that the worker requested that checks be made out to his business and it became effective July 1, 2011.

The firm provided a copy of the Declaration of Independent Contractor Status Form (for insurance purposes) which was completed and signed/ initialed by both parties (certifying under penalties of perjury) that the worker performed consulting services. The worker acknowledged the completion of the form that he completed at the request of the firm.