Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation Business/Computer Services/Office/Sales	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 determination in connection with services performed for the firm for tax years 2024-2025 as a software engineer. Services performed included developing and maintaining features for the firm's online ordering platform, including loyalty memberships, and third-party integrations. The worker filed Form SS-8 as they believe they received Form 1099-NEC in error. The worker believes they were an employee as they received an hourly rate of pay. The worker received directives from the firm

The firm's response stated its business is a cookie delivery company that focuses on the delivery of cookies to customers. The worker was engaged as a contract software engineer. Services performed included developing codes for specific IT projects. The worker was classified as an independent contractor as the worker was engaged for the sole purpose of creating the codes for these IT projects. The firm provided a copy of the independent contractor's agreement, signed by both parties for review.

The firm stated there was no training provided to the worker on coding. The firm provided the expected website functionality that the worker was contracted to complete. The firm did not provide the worker with any work assignments. The firm's CTO provided the project specifications. The worker determined the methods by which this was performed. If problems or complaints arose, the firm would be contacted. The worker was responsible for resolution. The firm did not require the worker to complete any reports. The firm required the worker to attend meetings for progress updates. Services were performed on both the firm's premises and the worker office/shop on a regularly scheduled basis. The firm required the worker to personally perform services. The firm was responsible for the hiring and paying of substitutes or helpers. The worker stated they received onboarding regarding the firm's internal systems and ongoing task direction. The firm provided work assignments and determined the methods by which those assignments were performed. If problems or complaints arose, the firm would be contacted as well as responsible for resolution. Reports and meetings were both required.

The firm stated they provided the worker with a laptop, monitor, and desk space when working on the firm's premises. The worker did not lease space, equipment, or a facility. There were no job-related expenses incurred by the worker in the performance of the services for the firm. The worker was paid an hourly rate of pay. The worker could incur a financial risk performing services for the firm. The worker could not suffer a financial loss performing services. Both parties agreed to the rate of pay for the services provided. The firm did not carry workers' compensation insurance on the worker. The worker stated the firm provided the worker with a laptop and access to internal systems. The firm reimbursed the worker for approved travel related expenses according to company policy. The worker did not take a financial risk and could not suffer a financial loss performing services. The firm set the rate of pay for the services provided.

The firm stated there were no benefits made available to the worker. Either party could end the work relationship without penalty. The worker did not perform similar services for others during the term of the work relationship. There was an agreement prohibiting competition between the parties. The firm did not introduce the worker to their customers. The work relationship between the parties ended when the contract ended.

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, the firm's statement that the worker was an independent contractor pursuant to an oral 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. The firm provided work assignments and ultimately 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. The need to direct and control a worker and their services should not be confused with the right to direct and control. The worker received payment for the services provided from the firm directly. The worker provided their services on behalf of and under the firm's business name rather than an entity of their own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their customers. This gave the firm the right to direct and control the worker and their services in order to protect their financial investment, their business reputation, and their relationship with their customers.

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. 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 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. Both parties retained the right to terminate the work relationship at any time without penalty. There is no evidence to suggest the worker performed similar services for others as an independent contractor. 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.