

SS-8 Determination—Determination for Public Inspection

Occupation 02LAW Law Staff	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

The worker initiated the request for a determination of his work status as an attorney with the firm for tax years 1991 to 2014. The worker was treated as an employee until 2013 by virtue of the Form W-2. In 2014, the worker was issued Form 1099-MISC. The firm's business is described as a law firm.

The firm's response was signed by the Executive Director. The firm's business is legal services. The worker performed legal services as an 'Of Counsel Attorney'.

A copy of the letter dated November 7, 2013 (Formal Notice of Non-Renewal or Termination of 2006 Employment Agreement), from the firm to the worker was provided. On Page 2 paragraph 1, with respect to two identified cases, it was agreed that the current compensation arrangement would survive as the cases would not be resolved by December 2013 termination date.

In the memorandum to the worker dated December 20, 2013, the memo served to confirm that worker was authorized to continue through January 9, 2014 to settle the named suit, provided the worker did not exceed 50 hours. The services were considered services on behalf of the firm, and as communicated separately, the worker was entitled to compensation from any recovery in the named-matter, as provided in the employment agreement. With the authorization from the firm and acceptance by the worker, the firm's malpractice insurance would cover the activities authorized in this memorandum.

In a telephone conversation with the current executive director, she stated that the income was a 'receivable' that was paid under the 2006 agreement; although no withholding since he was not an employee at the time the monies were paid.

In a follow-up letter from the firm dated 3/27/2018, the case had been brought to the firm by the worker was scheduled for mediation in January 2014. Under the employment agreement that terminated December 2013, the worker was not entitled to compensation of fees recovered by the firm; however, there was a verbal agreement between the firm and the worker, that the worker would share in a portion of the fee recovery. The details of the verbal agreement were not noted and the calculation method used to determine the worker's share of the recovery is unknown.

The 2006 Employment Agreement, explains the percentage of fee credits allocated to the worker on those matters on which the Employee performs legal services and that the United States and the state's withholding taxes would be withheld from the salary and bonus payments together with the Employee's required FICA contributions and any other amounts required by law or elected by the Employee.

Analysis

The worker agreed to continue to provide services on behalf of the firm and as covered by the firm's malpractice insurance, to resolve the identified cases. The firm acknowledged that a case brought to the firm by the worker was scheduled for mediation January 2014, and that under the employment agreement that would terminate December 2013, the worker was not entitled to compensation of fees recovered by the firm; however, a verbal agreement as well as the memorandum and letter were issued, and it was agreed the worker would share in a portion of the fee recovery. The name by which the remuneration for services is designated is immaterial. Salaries, fees, bonuses, commissions, pensions, retirement pay, vacation allowances, and dismissal payments are wages if paid as compensation for services performed by an employee for his or her employer. The basis on which payments are made is immaterial in determining whether the remuneration constitutes wages. Remuneration may be paid on a basis of piecework or a percentage of profits; and may be paid hourly, daily, weekly, monthly, or annually.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. 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.

CONCLUSION

Based on the above analysis, we conclude that the worker was a common law employee, and not an independent contractor operating a trade or business and that the income was subject to employment taxes and applicable income taxes.