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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation LAW - Law Staff	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 is seeking a determination of worker classification for services performed for the firm as a court recorder from April 2024 until December 2024. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC instead of a W-2 and that they were misclassified by the firm as an independent contractor. The worker was responsible with setting up virtual and in-person meetings with disability judges, applicants, and representatives and then providing a written transcript of the meeting.

The worker states that they were an employee of the firm because they were employed in the same manner as any other job and they did not set up their own business to do so. There were no written or verbal agreements between the parties.

The firm states that their business is project management. They provide technology solutions, training, content development, and advanced business consulting services. The worker provided services as a verbatim hearing recorder, their primary duty being to digitally record hearing sessions at a date provided by their client. The worker was classified as an independent contractor because they could accept or decline assignments, they were engaged only for one contract, they operated as an independent business, they did not perform any jobs essential to the firm, and they were not hired for any roles outside of the specified contract. The firm attached a copy of the Subcontractor Agreement between the parties, which was signed by the worker.

The firm states that they engaged the worker based on already-existing qualifications and their skill set to do work required under the contract. The worker chose their own assignments. Hearing schedules were established by the firm’s contracted client, and the worker could accept or decline the assignment at their discretion. The worker determined the methods by which job duties were performed. If the worker encountered any problems or complaints, they were required to contact the firm. After contacting the firm, the worker could independently address the issue. No reports were required of the worker. Services were performed as available at designated locations. No meetings were required of the worker. The worker could hire helpers or substitutes with the client’s approval due to credentialing/suitability requirements. The worker states that the firm trained the worker on how to set up meetings and provide the written transcript. The firm provided the worker with job assignments through email and determined the methods by which job duties were performed. If the worker encountered any problems or complaints while working, they were required to contact the firm for problem resolution. Services were performed as scheduled at customer locations 50% of the time and virtually 50% of the time setting up and attending meetings. The firm required the worker to attend training meetings. If they did not attend, they would not be able to have a job. The firm required the worker to personally perform services. The worker could not hire helpers or substitutes.

The firm states that they did not provide anything, and the worker provided incidental office supplies and other business materials at their own expense. The required recording device was provided and owned by the client. The worker was also issued an email address by the client to access their systems. The worker was responsible for maintaining their own business expenses, insurance, equipment, and licensing fees. This could result in a financial risk or loss because they worked for a negotiated fixed rate. Customers paid the firm. The firm paid the worker based on invoices submitted that recorded the worker’s hours worked. The firm did not carry worker’s compensation insurance on the worker. The worker states that the firm provided a computer, telephone, and audio equipment. The worker did not provide anything. The worker did not lease any space, facilities, or equipment. There were no job-related expenses incurred by the worker. Customers paid the firm. The firm paid the worker an hourly rate of pay with no access to advance pay. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm set the rate of pay for services performed.

The firm states that their contract regulations determined that they would provide the worker with paid vacations, sick pay, and paid holidays. The worker performed similar services for other firms with no need of approval from the firm. The firm represented the worker to customers as a contractor performing services under the firm’s name. The worker quit and ended the work relationship.
The worker states that the relationship between the parties could be terminated by either party without liability or penalty. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The worker did not advertise their services to the public. The firm represented the worker to customers as a representative performing services under the firm’s name. The worker ended the work relationship.

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, co-adventurer, 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. The firm provided work assignments by virtue of the customers served 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. 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. Additionally, the firm provided the worker with benefits and paid time off. 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.