

**SS-8 Determination—Determination for Public Inspection**

|                                   |   |
|-----------------------------------|---|
| Occupation<br>02OFF Office Worker | Determination:<br><input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor  |
| UILC                              | Third Party Communication:<br><input checked="" type="checkbox"/> None <input type="checkbox"/> 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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the payer concerning this work relationship. The payer responded to our request for information regarding this work relationship.

From the information provided the payer is a municipality and the worker was an appointed court reporter under the firm's state revised code. The worker's duties and compensation structure are outlined in the state's revised code. The worker's duties are also outlined in the payer's written position description for court reporters. The payer compensates the worker on an hourly basis for the taking of notes of oral testimony during court proceedings and for filing and preserving these notes in the office of the official court reporter. The payer reports the worker's earnings for these services on Forms W-2. If a written transcript of a proceeding is requested, the worker is required make full and accurate transcripts of the notes. The payer states the majority of the time, the worker provides transcription services away from their premises. The payer compensates the worker on a per page basis for transcription services and reports the worker's earnings on Forms 1099-MISC.

There have been previous determinations concerning this same issue and for the same payer by the SS-8 Unit. The SS-8 Unit found in those decisions that court reporters income were wages for federal employment tax purposes. The payer believes that the transcription services performed by the worker are separate and distinct from the worker's position as an employee and that all the evidence previously submitted in previous cases did not clearly describe the statutory scheme of their state for compensating court reporters or articulated the approval by the attorney general of the bifurcated system for paying court reporters. The payer provided numerous documents for consideration in this case including but not limited to their state's s statutory provisions regarding the appointment and compensation of court reporters, their state's attorney general's confirmed practice of compensating court reporters, opinions and decisions made by the Internal Revenue Service and their public employee retirement system board, and a written position description for court reporters.

---

**Analysis**

While reviewing the information submitted for consideration, we have to consider if the transcription services that the worker performs in this case is above and beyond her statutory duties in her appointed position or if she is performing services for a profit and her services are separate and distinct from her services as an employee. In this case, the worker is an appointed court reporter under state statute and her duties and compensation package are outlined in revised code sections. All civil and criminal actions in the court of common pleas are recorded. The worker's duties under this appointed position is to take accurate notes of or electronically record the oral testimony of proceedings and to file and preserve these notes or recordings in the office of the official reporter for a specified period of time. The revised code of the payer's state states that when notes have been taken or an electronic recording has been made, if the court or either party to the suit requests written transcripts of any portion of the proceeding, the court reporter will make full and accurate transcripts of the notes or electronic recording. The revised code continues to state that the court may also direct the court reporter to furnish to the court and the parties copies of decisions rendered and charges delivered by the court in pending cases. The position description for a court reporter in the payer's court system states in part that the court reporter will record verbatim proceedings of court activities as requested by a judge and/or counsel and will perform court reporting transcript preparation duties outside of the hours the reporter performs court duties. We, therefore, believe the worker's transcription services are a part of her appointed position as a court reporter.

Compensation to a court reporter for making written transcripts are fixed by the court of common pleas of the county in which the trial is held. While the payer's state laws does indicate that the worker as a court reporter can be compensated two separate rates; one rate (hourly) for taking notes in the courtroom and a separate rate of compensation (per page) for transcription services, it does not indicate how that compensation should be reported for employment tax purposes. Although a position may have two separate ways of compensating a worker, it does not determine the worker's employment tax status.

The worker is provided with transcription equipment by the county and a copy of the agreement between the county and the worker regarding this equipment was provided for consideration. The worker is not required to purchase equipment but to pay a per page fee for the use of that equipment. Paying a per page fee only reduced the worker's earnings; it did not put her in the posture of incurring a loss. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The opportunity for higher earnings or of gain or loss from a commission or per page arrangement is not considered profit or loss.

Based on all of the information submitted and available to us, we believe the income received by the worker from the payer for preparation of transcripts is wages for employment tax purposes and a part of her duly appointed position whether the transcription services are performed at the payer's premises or at another location.