

SS-8 Determination—Determination for Public Inspection

Occupation

02OFF Office Workers

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**

Information provided indicated the firm is a financial planning business. The worker was hired to perform services as an administrative assistant on a part time basis as a college intern for tax years 2014 and 2015. The firm reported the income earned on Form 1099-MISC for 2014 and 2015. For tax years 2016 and 2017 our records also show the firm issued Form W-2. The firm indicated work was performed approximately eight to ten hours per week, around her school schedule. All work was performed on firm premises. The firm indicated it provided a laptop, desk and office supplies. The worker was paid by the hour. The customer paid the firm. The firm indicated the worker left to get a full time job with another firm.

The worker has indicated there were no changes in services performed in 2016 and 2017 and the firm then issued Form W-2. All training was given by co-workers or from the firm owner. She worked two days a week eight-thirty to four-thirty. She agreed all work was performed on the firm premises, utilizing the firm's equipment and supplies. She agreed she was paid by the hour, and the client paid the firm. She was given paid sick days, paid holidays and bonuses. Either party could terminate the work relationship without incurring a penalty or liability. She indicated she did perform similar services for others, with the approval of the firm. She indicated she was represented as an employee. She stated she quit.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Therefore, your statement that the worker was an independent contractor pursuant to an 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.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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 worker did not own her own business for the services performed for the firm. Training was provided by the firm when initially hired. The services were performed under the firm's business name, throughout the work relationship. The firm converted the worker to employee status in 2016 with no changes in services performed having taken place. Therefore, the worker, whether part time or full time was an employee for all services.

For some quarters of the tax years in question, it is possible that the statute of limitations has expired for the assessment of taxes in this matter. If so, it will not be necessary for you to amend your return(s). Internal Revenue Code (IRC) section 6501(a) provides that the statute of limitations for assessment generally expires three years from the due date of the return, or three years after the date the return was actually filed, whichever is later. IRC section 6501(b)(2) provides that for certain employment tax returns, the three years would begin April 15 of the following year for which the return was due. IRC section 6511(a) provides that a claim for credit or refund of an overpayment shall be filed within three years from the date the return was filed, or two years from the date the tax was paid, whichever expires later.