

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**

The worker initiated the request for a determination of her work status as an administrative assistant in tax years 2017 and 2018, for which she received Form 1099-MISC. In this position she kept the office running smoothly by assisting in scheduling, ordering products, mailing packages, and keeping things organized and as clean as possible. The firm's business is described as an independent sales director for [REDACTED] products. The firm sells products and recruits new consultants to also sell products.

The firm's response was signed by the owner. The firm's business is a [REDACTED] Sales Director. The worker provided services such as shipping products, online customer management, scheduling communication, and creating flyers.

The worker indicated that she was provided with a written 'to do' list that was established prior to her employment, explaining what tasks needed to be accomplished each month. The job assignments came from the firm via text, email, and a monthly 'to do' list. The firm determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered 2 days per week at the firm's owner's home office, 2-3 days a week at her home, with most work done at the firm's office which included restocking products, tracking monthly progress of consultants working under the firm's owner, and shipping products to out-of-town customers. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm.

According to the firm, the worker was given training and instructions in person as to the job tasks when she was hired and with any new tasks assigned. The worker was given the job assignments over the phone, in person, or via email. The firm and worker determined the methods by which the worker's services were performed. Any problems or complaints encountered by the worker were directed to the firm for resolution, with the firm and worker talking it through. The firm indicated the worker's services were rendered 90% from worker's home and 10% from firm's home office. The worker was required to perform the services personally.

The firm and worker concurred that the firm provided almost all supplies, equipment, and materials such as product samples, packaging, stamps, labels and envelopes; the worker indicated she furnished paper and ink. The worker did not lease equipment, space, or a facility; but, stated she incurred expenses for vehicle fuel, babysitting, printer paper and ink. The firm and worker indicated the worker was paid a salary/per month. The customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker was not at risk for a financial loss in this work relationship unless she was in a car accident. The worker did not establish level of payment for services provided or products sold.

Both parties acknowledged that there were no benefits extended to the worker, that either party could terminate the work relationship without incurring a liability or penalty, and the worker was not performing same or similar services for others during the same time frame.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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 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.