

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 a bus driver, cook, and office worker in tax years 2017 and 2018, for which she received Form 1099-MISC. The firm is described as a synagogue.

The synagogue's response was signed by the Rabbi. The synagogue provides religious, educational, and charitable services. The worker was a congregant who was volunteering in tax years 2010 to 2016, and who gradually began to assist with more tasks such as driving the synagogue bus, planning events, cooking, and general office work.

The worker stated she was not given training and instructions. The Rabbi or his wife determined the methods by which the worker's services were performed; any problems or complaints encountered by the worker were directed to the Rabbi or his wife for resolution.. The worker's services were rendered when picking up kids for school and at the synagogue office. The worker was required to perform the services personally.

According to the synagogue's response the worker was not provided with training and/or instructions. Her job assignments were a result from asking other employees if they needed any help or assistance. The worker determined the methods by which she performed her tasks. Any problems or complaints encountered by the worker were directed to the Rabbi for resolution if she couldn't resolve the issue. The worker had no set schedule; but, would divide her time between driving, event planning, cooking, and general clerical assistance. The worker's services were rendered at the synagogue's premises and the surrounding neighborhood. The worker was required to perform the services personally; and, any additional personnel were hired and paid by the Rabbi.

Both parties acknowledged the worker was provided with the bus, kitchen, and office equipment. The worker furnished nothing, she did not incur expenses, and she did not lease equipment, space, or a facility. The worker was paid an hourly wage; however, the response associated with the rabbi's response was that the worker set her own hours and processed the payments to herself. The worker was not covered under the synagogue's workers' compensation insurance policy. The parties concur that the worker was not at risk for a financial loss in this work relationship and she did not establish level of payment for services provided.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame. The worker was represented as an assistant to the Rabbi. The worker was involved in an accident while driving the bus and she is no longer able to work.

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.

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 continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

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 Rabbi/synagogue 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 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 synagogue in meeting its obligations to its congregation.

CONCLUSION

Based on the above analysis, we conclude that the Rabbi/synagogue 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.