

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 his work status as an office worker in tax years 2017 and 2018, for which he received Form 1099-MISC. The firm's business is described as a chassis leasing depot.

The firm's response was signed by the VP of Finance. The firm's business is lease or rent of truck trailer chassis for container shipping. The worker provided services as described in the contract; he did not have a job title.

The worker stated he was given specific on-the-job training and instructions and his job assignments from a supervisor. 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 at the site four nights per week from 6 pm to 3 am. The worker was required to perform the services personally; any additional personnel were hired by the supervisor.

According to the firm, specific training and instructions on the firm's in-house developed software and equipment. After the training he was able to work independently with very little oversight. 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. The worker was in school with no regular schedule; the firm estimated he worked 90% of the time on the firm's premises and 10% at home.

The worker indicated the firm provided the facility, desk, chair computer, and office supplies; and, he furnished nothing. He did not lease equipment, space, or a facility. The worker was paid an hourly wage; the customers paid the firm. The worker stated he was not at risk for a financial loss in this work relationship. The firm established the level of payment for services provided and/or products sold.

The firm acknowledged providing the computer system on the company network. The worker furnished nothing, he did not lease equipment, space, or a facility, and he did not incur expenses in the performance of his job. The worker was paid an hourly wage. The worker was not covered under the firm's workers' compensation insurance policy. The firm indicated the worker was not at risk for a financial loss in this work relationship as his duties were back office administrative duties and there was no risk for either party. The worker established the level of payment for services provided or products sold.

Both parties concur there were no benefits of paid vacations, health insurance, personal days, or paid holidays extended to the worker; the worker noted he was entitled to bonuses. Either party could terminate the work relationship without incurring a liability or penalty. The worker stated he was not performing same or similar services for others during the same time frame. The firm indicated the worker had no contact with customers and that he left on good terms to pursue school.

The firm provided a copy of the contract dated January 27, 2017, which was not signed by the firm. The worker's duties were listed as: Daily Master Inventory Update; Daily Rental/Long Term Rental Inventory; Scan Interchanges to Sharepoint daily; Maintain GPS Inventory; Plate -Maintain plate ordering and inventory, Pull all plates, and update the Daily Master Inventory to ensure we are receiving the plates with the associated VIN's, writing down the chassis number associated with the VIN (), and issuing them to the Mechanics, and logging them; Associate the GPS device in Registration reconciliation -Ensure we receive all the plates with the Registration copy, and each Registration Copy has a plate and record receipt on Master Inventory; e-Modal Trucker Approved List -Print each night before he leaves, and works with Marine Clerk to look up any that are not on their sheet; and, Physical Inventory Reconciliation with Master Inventory when performed in the yard.

The contract also provided the following: compensation in the sum of \$15 dollars per hour on a monthly basis, with the worker to commit to working a minimum of 20 to 30 hours per week; worker to submit timesheets describing hours for every month worked with such timesheet to be approved and signed by a company person; worker to be paid once monthly in arrears, with a one-week lag period to allow for time sheet submission and approval; worker to report directly to [REDACTED] and in the absence of the [REDACTED] then to TE; worker to be reimbursed for reasonable reimbursable expenses incurred in the performance of the Services, with all expenses to be approved by [REDACTED]

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.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship.

If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. See Rev. Rul. 56-660, 1956-2 C.B. 693. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee.

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.

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.

The firm's 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.

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.