

SS-8 Determination—Determination for Public Inspection

Occupation 02RET Sales Associate	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <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

The firm is operating a hardware store. The firm engages the worker to perform sales associate services for the firm's business operation. The firm paid the worker a salary as an employee from 2000 through 2015. In 2015 the worker was issued both a Form W-2 and Form 1099-MISC for a salary paid for the services and only Forms 1099-MISC were issued in subsequent years. The services remained the same.

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

Based on the information provided the worker was an employee under common law for the entire working relationship.

Analysis

Since the firm paid the worker as both an employee and then as an Independent Contractor for the services and there were no substantial changes in the services provided by the worker for the firm's business operation this would be considered an erroneous misclassification of employment showing intentional disregard to the requirement of having taxes withheld from employee payments for services.

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The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

As the employer of the worker, you are liable for federal income tax withholding, Federal Insurance Contributions Act tax (FICA), and Federal Unemployment Tax Act (FUTA) tax for the worker as provided by sections 3101, 3111, 3301 and 3401 of the Internal Revenue Code. Since a portion of the income received by the worker was incorrect due to an error in interpreting wages or employment as defined in Internal Revenue Code (IRC) sections 3121(a) and 3121(d), respectively, you would not qualify for the reduced rates under IRC section 3509.