

**SS-8 Determination—Determination for Public Inspection**

Occupation 02SAL Salesperson	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 a retail cell phone sales business and the worker was engaged through an application process to sell cell phones from the retail business location and manage the assigned store locations. The firm provided training and instructions on the cell phones and accessories as well as payment processing. The firm assigned the worker schedules to work at various locations. The firm's designated district manager determined the methods used by the worker to perform the services. The firm required the worker to contact the district manager regarding any problems or complaints the worker could not handle as a store manager for resolution. The firm required the worker to provide the firm with daily sales and cash reports. The worker was required to perform the services during store designated hours at assigned locations. The worker was required to attend monthly meetings by the firm. The firm required the worker to perform the services personally. The worker was required to obtain the firm's prior approval to hire and pay substitutes or helpers and the firm would reimburse the worker if any were paid by the worker.

The firm provided everything the worker needed to perform the services. The worker provided nothing, did not lease anything or incur any expenses. The firm paid the worker an hourly wage plus commissions on sales. The firm allowed the worker to take advances against payment for services. The customers paid the worker and the entire amount was required to be turned over to the firm. The firm carried workers' compensation insurance. The firm determined the level of payment for the products and services. The worker could not suffer any economic loss and had no financial risk.

There were no contracts between the firm and the worker. The firm did not provide the worker with any benefits. The worker did not perform similar services for others while performing services for the firm. The worker did not advertise as a business to the customers. The firm referred to the worker as an employee to the customers. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

The firm issued the worker a Form W-2 for the hourly payments and a Form 1099-MISC for the commissions on sales.

---

**Analysis**

---

The worker was an employee performing services for the firm's business operation at the firm's place of business as assigned and was paid an hourly wage plus commissions on sales. The firm issued the worker a Form W-2 for the wages and Form 1099-MISC for commission payments. Supplemental wages are compensation paid to an employee in addition to the employee's regular wages. They include, but are not limited to, bonuses, commissions, overtime pay, accumulated sick leave, severance pay, awards, prizes, back pay, and retroactive pay increases for current employees, and payments for nondeductible moving expenses. Other payments subject to the supplemental wage rules include taxable fringe benefits and expense allowances paid under a non-accountable plan.

Generally, if supplemental wages are paid with regular wages but the amount of each is not specified, income tax is withheld as if the total were a single payment for a regular payroll period.

If supplemental wages are paid separately (or combined in a single payment with the amount of each specified), the income tax withholding method depends partly on whether or not the income tax is withheld from the employee's regular wages.

If income tax is withheld from an employee's regular wages, one of the following methods can be used for the supplemental wages:

1. Withhold a flat 25%; or
2. Add the supplemental and regular wages for the most recent payroll period this year. Then figure the income tax withholding as if the total were a single payment. Subtract the tax already withheld from the regular wages. Withhold the remaining tax from the supplemental wages.

In the future, if income tax is not withheld from the employee's regular wages use method 2. (This would occur, for example, when the value of the employee's withholding allowances claimed on Form W-4 is more than the wages.) Regardless of the method used to withhold income tax on supplemental wages, including bonuses, supplemental wages are subject to social security and Medicare taxes.