

SS-8 Determination—Determination for Public Inspection

Occupation

02SAL Salesperson

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 firm is a advertising book publishing business. The firm engaged the worker to sell books, advertising space, and items to potential and existing customers in assigned territories under written agreements. The worker applied for the job in 2015 and worked through 2016, with an additional payment made by the firm to the worker in 2017.

The firm or firm designated management provided the worker with the necessary training and instructions to perform services according to the firm's policies and procedures. The firm assigned the worker territories and added or changed them as needed. The firm allowed the worker to determine the methods used to perform the services. The firm required the worker to contact the firm or firm's sales director regarding resolution of problems or complaints. The firm required the worker to provide the firm with weekly sales activity reports and signed sales contracts. The firm allowed the worker to determined the work schedule in order to address the contract requirements and expectations in the assigned territories. The worker performed the services from home and at customers locations. The firm did not required the worker to perform the services personally. If the worker hired substitutes or helpers the worker did not need the firms' prior approval and the worker would pay them and not be reimbursed for the payment by the firm.

The firm provided all the paper supplies and required the worker to purchase all paper supplies from the firm to use in sales of the firm's products. The worker provided a home office, equipment, materials and supplies needed to perform the services. The worker did not lease anything. The worker incurred expenses for supplies and travel which were not reimbursed by the firm. The firm paid the worker on a commission basis and the customers paid the firm directly and indirectly through the worker. If they paid the worker the entire amount was required to be turned over to the firm with the sales paperwork. The firm did not carry workers' compensation insurance. The firm determined the level of payment for the products sold and paid to the worker for performance of the services.

There were signed contracts between the firm and worker indicating the various business expectations, commissions, bonuses, reporting requirements, termination, non-compete, non-disclosure and territory assignments. The agreements indicated the worker to be an independent contractor required to perform services according to the firm's business policies and procedures. All orders were required to be submitted to the firm for prior approval. The worker did not perform similar services for others and was prohibited from selling to firm's competitors. The worker did not advertise as a business to the public but advertised the firm's business and business products through various firm products purchased to use in making sales. The relationship could be terminated by either firm or worker at any time without incurring any liability for termination however the firm agreed to reimburse supply purchases and deduct payments for canceled items when the relationship ended.

Analysis

When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. The firm retained control over what, how, when, and where services were required to be performed by the worker and established goals to meet in the assigned territories per the agreements signed between the parties. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring significant on-going business capital outlays with business risks an employer/employee relationship is evident. In this case, the worker had some business investments in products used to perform the services which were required to be purchased from you. The worker had some control over profit and loss due to some business capital outlays being made however all the sales were required to be submitted to you to be approved and you determined the level of payment for products and services the worker sold to the customers. The firm had the significant on-going business investments and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered having control over profit or loss. These facts evidence financial control by the firm over the services performed by the worker.

The were signed contracts between the firm and worker indicating the worker to be an independent contractor however the firm retained control over various working relationship issues built into the agreement, The worker did not advertise as a business to the public but performed services for the firm's business under the firm's name on a regular and continuous flexible schedule basis over several months. The firm offered the worker the opportunity to earn bonuses based on meeting the firm's designated requirements.

The relationship could be terminated at any time without incurring any liability for termination by either party. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.