Department of the Treasury
Internal Revenue Service

Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
SAL - Salespersons	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] 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 submitted a Form SS-8 for services performed for the firm as a Salesman selling cars to individuals and businesses from January 2016 until August 2024. The worker filed a Form SS-8 because they believe that they erroneously received a W2 from the firm and should have been classified as an independent contractor.

The worker states that they were an independent contractor of the firm because they are not an employee under 218 common rule laws, not an employee under statute and does not receive "wages". There were no written or oral agreements between the parties.

The firm states that they are a car dealership business. The firm hired the worker as an employee. The firm classified the worker as an employee because the worker sold cars to customers. There were no written agreements between the parties. There were no written or oral agreements between the parties.

The firm states that the worker was shown sales training. The sales manager gave the worker job assignments in person. The sales manager determined the methods by which job duties were completed. If the worker encountered any problems or complaints while working, they were required to contact the sales manager. The sales manager would be responsible for problem resolution. The worker completed sales as scheduled 100% at the firm's premises. The firm did require the worker to attend sales meetings and the worker would be penalized if not in attendance by receiving a verbal penalty. The firm did require the worker to provide services personally. The worker did not have any hiring authority.
The worker states that they received training on how to be a salesperson providing a service and selling directly to customers. The worker states the salesperson is solely responsible for sale assignments and determines the methods by which assignments were performed. If any problems or complaints arise, the firm owner was to be contacted. The firm owner was responsible for the resolution. There were no reports required of the worker. The worker performed sales duties Monday-Saturday 90% of the time at the firm's premises, and 10% of the time at customer locations delivering cars. The firm did require the worker to attend sales meetings and the worker would be penalized if not in attendance by daily suspension from sales. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they provided everything while the worker provided nothing. The worker did not provide or lease any space or equipment. The worker did not incur any job-related expenses. The firm paid the worker a salary pay plus commission but did not guarantee a minimum amount of pay. The firm did give the worker access to advance pay on a situational basis. Customers paid the firm. The firm did carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm sets the rate of pay for services performed and products that are sold.
The worker states that the supplies, equipment, materials and property provided by either the firm or worker does not apply. The worker states firm paid them an commission only and does not receive wages. Customers paid the firm. The worker had no exposure to financial risk or loss. The firm sets the rate of pay for services performed and products that are sold.

The firm states that they did provide benefits to the worker such as paid vacations, insurance, and bonuses. The firm or worker could end the work relationship without incurring penalty. The worker did not perform similar services for other firms. There were no non-compete agreements in place between the parties. The worker did not advertise their services to the public. The worker did not assemble or process products at home. The firm did not introduce the worker to its customers. Services were performed under the firms name. The worker was currently working for the firm during this time.
The worker states that there were benefits provided to them by the firm such as insurance and bonuses. The firm or worker could end the work relationship without incurring penalty. The firm did introduce the worker to its customers as the senior sales agent. The worker did advertise their services to the public by business cards. The firm did not introduce the worker to its customers. The services are performed under the workers name. The worker was currently working for the firm during this time.

Analysis

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as “common law.”

Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer’s right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term “employee” means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker’s activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

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. 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. In this case, the worker states that they received training on how to be a salesperson providing a service and selling directly to customers.

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.

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. 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. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer’s premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. In this case, the worker performed sales duties Monday-Saturday 90% of the time at the firm’s premises, and 10% of the time at customer locations delivering cars.

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. In this case, the worker states the firm sets the rate of pay for services performed and products that are sold. Customers paid the firm. Therefore, the firm paid the worker.

The right to discharge a worker 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 so long as the independent contractor produces a result that meets the contract specifications. In this case, the worker states the firm or worker could end the work relationship without incurring penalty.

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker’s status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate how the parties perceive their relationship include the intent of the parties; the provision of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient’s regular business activities. 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. Both parties retained the right to terminate the work relationship at any time without incurring a