

SS-8 Determination—Determination for Public Inspection

Occupation

03IEI Inspectors/Estimators/Investigators

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**

Information provided indicated the firm is a marine refinishing business. The worker had been retained by the firm in tax years 2010, 2012, 2014, 2015, and 2016 as a Safety Consultant. His duties were to inspect the various jobs being performed at the marina and to enforce compliance with all safety regulations and company policy. The firm indicated in 2016 he became an employee, as the Marina had been sold and was under new management with different rules and regulations. The new management did not allow independent contractors to enter the premises. Therefore, the worker had to become an employee. Prior to 2016 the firm feels he was a contractor, as he was not required to attend any company meetings, was not directed by anyone from the firm. He decided when he would work and what he would inspect. He would inform staff of what he had deemed safe or unsafe. He never received work assignments from anyone. He was paid a flat fee for each day and worked at his own discretion. All work was performed on firm premises. The firm indicated it provided a golf car for his independent & unsupervised use. The firm was a customer of the worker. The worker moved to another state.

The worker indicated he reported to the office/safety manager. He performed his inspection by the direction of a supervisor and other individuals in management/supervisory roles. The worker indicated he had been given instruction is [REDACTED] compliance, a thirty hour training. He indicated he worked part time approximately six to eight hours per shift, twice a week. The worker stated the firm's general liability insurance made him have a safety person on payroll. That is when he was switched to employee status and paid by the firm's payroll company. There had been no changes in services, he continued to work for the firm. He indicated he attended monthly safety meetings. He indicated the firm provided all supplies and equipment, materials for work. He provided his own hard hat and safety glasses. He indicated he was paid on salary. The customer paid the firm. He stated the firm did carry workmen's compensation insurance. He agreed he moved out of state.

Analysis

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.

Therefore, your 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.

- Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control.
- A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.
- A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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 whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, 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.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack 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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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. There is no indication or documentation provided that indicated the worker owned or operated his own business, or performed similar services for others. The worker continued to perform the same services when converted to employee status. The firm had indicated the business had been sold, [REDACTED] shows the same ownership and officers.