

SS-8 Determination—Determination for Public InspectionOccupation
03INS InstallersDetermination:
☒ 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 steel fabrication shop as well as buys and installs premanufactured aluminum fence and gates. The worker had been retained by the firm in 2016 as an installer/fabricator for the firm on a part time basis. The firm stated he was buying and selling cars and was looking for part time work. This worker and others did not want to be tied to a forty hour work week. They used their time as they saw fit. It was agreed the firm would pay him between five and seven hundred dollars per install. The firm indicated the worker knew he would receive Form 1099-MISC. The firm issued 1099-MISC documents, under two different business identification numbers. One of which does not appear to belong to the company. The firm indicated they went over how they did things to please their customers. The firm gave him jobs that they knew he had the skills to do. The firm indicated they determined how the work was performed. Forty percent of the work was performed at their shop, the other sixty percent was performed at the customer location. The firm provided hand tools, welders, materials, shop and some transportation. The worker also provided hand tools, welders and transportation. The firm stated they would reimburse for miscellaneous parts, screws etc. The firm indicated the customer paid both the firm and worker. The worker would turn in any payments made to him. The worker would be responsible to replace his own tools. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated he was represented as one of their workers. The firm stated first he quit and then he was fired.

The worker indicated he was hired as an employee. He indicated the firm said he would get a Form 1099-MISC, but not to worry they would pay his taxes. He agreed work assignments were given from the firm. he performed services Monday through Friday eight to five. (copies of e-mail discussions between firm and worker discussing hours worked, and early departures were provided.) He was told what to do and where to do it. They also worked some Saturdays. Most work was performed at the customer locations. He indicated the firm provided the equipment, supplies and materials. He was paid by the hour, all straight time, no overtime. The customer paid the firm. Some holidays were paid also. He stated he resigned and gave them back their key. (resignation letter provided.)

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.

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.

-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. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. The instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

-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.

Analysis

continued...

---The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

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. The fact services were not performed on a full time basis, does not make individual(s) independent contractors. The worker(s) did not own their own steel, fence or fabrication businesses. The firm hired the worker(s) to assist them with the orders for their customers. All work was performed as directed, in the order it was directed. The firm instructed how they wanted things done, in order to satisfy their customers. The firm provided all materials and equipment. Whether the worker as paid per job or by the hour, indicated he had no opportunity for profit or loss.