

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS Construction/Technical Services/Trades	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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is in the farming business and the worker was engaged in 2016 as a self-employed gopher trapper. The firm believes the worker was an independent contractor (IC) because he had his own equipment and trapped gophers when he was not trapping gophers at other farms. The worker states he believes he was an employee of the firm because he filled out a job application and Form W-4 and other co-workers did the same work and he believes they were employees.

The worker states the firm did not provide any training to him and any instructions were given to him by co-workers. The firm guided the worker to where the gophers were concentrated. The worker personally performed his services in the fields owned by the firm. The worker provided numerical progress reports to the firm with the kill counts and tails as proof of kill. The worker states he worked roughly every day for as long as it took to get traps in the ground, pull traps for the next day, usually walking many miles with a 30 to 50 pound bucket of traps.

The firm provided no equipment, supplies, and materials to the worker in order to perform his services. The worker provided the traps, flags, gloves, knee-pads, poker, buckets, shovels, and food. The worker was paid by per gopher caught and the firm determined his rate of pay. The worker states he could incur a loss due to loss and damage of traps and supplies and fuel costs. The firm reported the worker's earnings on a Form 1099-MISC.

The worker states he was eligible for a personal day off every couple of weeks and he did not perform similar services for others. The firm states the worker performed similar services to other farms. The worker states he performed services by providing materials and his personal knowledge and by instructions provided by co-workers.

Analysis

As in this case and 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, the worker was experienced in this line of work and did not require any training or instructions from the firm. While the firm may have directed the worker to a specific field in which to trap, this does not mean the firm directed the worker on how to perform his services. The worker drove himself to the job sites and worked the hours and days he determined.

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 invested capital and assumed business risks, and therefore, he had the opportunity to realize a profit or incur a loss as a result of the services provided. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker provided all the equipment supplies and materials so he could perform his services.

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 engaged in an independent enterprise and his services were not integral to the business of the firm's farm.

Based on the above analysis, we conclude that the firm did not exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, but found that an independent contractor relationship existed.