

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS Miscellaneous Laborers	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

Information provided indicated the firm is a permit livestock buying station. The worker provides labor services during the auction dates. He has provided services from 2008 to 2018. The firm has reported the income consistently on Form 1099-MISC, stating the worker was an independent contractor, as they only work when they choose and for as long as they want. They are paid hourly or on a day rate. No specific training is given. They are advised where to be and what to do. The owner determines how the work is performed. Auction hours are usually from ten to four, but it depends on the amount of livestock that comes in. Services are performed at the auction location. The firm indicates it provides all equipment and supplies. The firm indicated it pays all expenses. The customer paid the firm. The firm does carry workmen's compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker still performs services for the firm.

The worker agreed he provides laborer services for the auction firm. He indicated he has performed these services for the past eight years. He works every other Saturday, during the livestock purchases. Oral work assignments are given from the owner. He works from ten am to four pm, at the stock yard. He is required to perform his services personally. The firm hires and pays all workers. The worker indicated the firm provides the truck and money. He provides his own safety boots, gloves, cattle pronger etc. He indicated salary was determined by the number of animals purchased on a given day. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated he is represented as an employee of the firm. He also stated he still works for the firm.

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

Analysis

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 services are/have been performed on a continuing basis for eight years. The worker does not own a company for which he provides those services. He is required to follow the directions of the firm owner, and perform services during the auction hours, determined by the firm. Whether paid by the hour or by the day, the worker is not in a financial position to incur a profit or loss. All work is performed under the firm's business name.