

**SS-8 Determination—Determination for Public Inspection**

Occupation

Construction/Technical Services/Trades

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**

The firm is a beverage distillery with a tasting room. The firm engaged the worker from 7/2019 to 1/2019. The worker submitted a Form SS-8 after receiving a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

The firm's perspective is the worker was an independent contractor. The worker was hired as a handyman to work around the distillery, building and grounds. The worker was told what tasks needed to be completed and he completed those tasks as he saw fit to complete them. The worker would then submit weekly invoices to the firm.

The worker's perspective is he was an employee. He was provided with a shirt with company's logo to wear while working. He was trained and given daily directions from the firm. He worked a set schedule determined by the firm and was required to request time off. He was assigned an email address by the firm.

The worker stated he received training and instructions from the firm. He indicated he had no prior experience in distillery. He was trained in the distillery's operation and how to use the forklift. The firm asserted the worker completed tasks as how he fit. However, there were some tasks that required basic instructions. Both parties agree the worker received his work assignments from the owner of the firm. The worker stated the owner would determine the methods by which those assignments were performed whereas the firm asserted the worker did. He worked 5 days a week, from 9:00 am to 5:00 pm, and received regular weekly remuneration for his services. The worker described his services for the firm. He would blend, bottle, label, and packaged vodka. He was responsible for shipping online orders on a bi-weekly basis. He would serve customers and sold retail bottles and clothing from the firm's tasting room. He also cleaned the distillery and maintained the firm's landscaping. The firm was responsible for problem resolution. The worker specified he was required to clock in daily on the firm's point of sale system and submit a weekly report of how many hours were worked. The firm indicated no reports were required of the worker. He performed the services on the firm's premises. The worker was not required to attend any meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. The worker worked exclusively and on a continuing basis for the firm. His services were an integral and necessary part of the services the firm provided to its customers. The worker indicated the firm was responsible for the hiring and paying of substitutes or helpers. The firm this was not applicable in this case.

According to the worker, he did not furnish any of the tools or equipment used in performing the services. The firm indicated the worker provided his own tools. The worker did not lease equipment. The firm determined the fees to be charged. The firm specified the worker sometimes purchased materials for the firm was reimbursed by the firm. The worker was paid an hourly wage. The firm did not allow the worker a drawing account, or advances against anticipated earnings. The firm's customers paid the firm. The firm did not carry worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

Either party could terminate the work relationship at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did not perform the services for others. He did not advertise his services to the public or maintain an office, shop, or other place of business. He was required to perform the services under the name of the firm and for the firm's customers. The worker stated he was provided with an email address from the firm. He provided as evidence an email thread. The relationship between the parties ended when the worker resigned.

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## Analysis

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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.

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. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, 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.

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.

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 the payer's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.

The firm can obtain additional information related to worker classification online at [www.irs.gov](http://www.irs.gov); Publication 4341.