

SS-8 Determination—Determination for Public Inspection

Occupation 03MIS.10 MiscLaborServices	Determination: <input type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is in the arts and crafts retailing business. The firm engaged the worker to perform seasonal arts and crafts production services as needed in the worker's home. The firm provided the worker with initial training and instructions on what and how to perform various services. The firm determined the methods used by the worker to perform the services. The firm called the worker as items or services were needed by the firm's business to sell at open markets. The worker contacted the firm regarding any problems or complaints for resolution. The worker performed the services during hours determined by the worker in order to meet the firm's requests for items. The firm required the worker to perform the services personally.

The firm provided materials and supplies needed by the worker to perform the services. The firm reimbursed the worker for any materials and supply expenses incurred. The worker did not lease space or equipment. The worker did not incur any on-going significant business expenses. The firm paid the worker on a piece work basis. The customers paid the firm. The firm determined the level of payment for the services through negotiated rate with the worker and products sold. The worker could not suffer any economic loss and had no financial risk.

There were no contracts but the firm stated there was a verbal working relationship agreement. The worker did not perform similar services for others. The worker did no advertising as a business to the public. Both parties retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

Internal Revenue Code (IRC) section 3121(d)(3)(A)(B)(C)(D) provides, in part, that workers in certain occupational groups who are not employees under the common law, are considered employees for FICA purposes if they received remuneration under certain circumstances. These categories, referred to as statutory employees, are:

1. Agent-drivers or commission-drivers;
2. Full-time life insurance salespersons;
3. Home workers;
4. Traveling or city salespersons.

Workers in these four occupational groups are employees for FICA tax purposes if they meet all of the following requirements, but do not meet the common law test:

1. The contract for service contemplates that the worker will personally perform substantially all the work;
2. The worker has no substantial investment in facilities; and,
3. There is a continuing work relationship with the person for whom the services are performed.

The home worker category of statutory employee includes people who make buttons, quilts, gloves, bedspreads, clothing, needle craft products etc, as well as typists and transcribers or the like. The work is done away from the employer's place of business, usually in the worker's own home, the home of another, or a home workshop.

To qualify as a statutory employee, the home worker must meet, in addition to all three of the general requirements of a statutory employee, all of the following requirements:

1. The work must be done in accordance with specifications given by the employer. Generally, these specifications are simple and consist of patterns, samples, etc.;
2. The material or goods on which the work is done must be furnished by the employer; and,
3. The finished product must be returned to the employer or other designated person. It is immaterial whether the employer calls for the work or the worker delivers it.

Compensation to an individual classified as a statutory employee performing services as a home worker is subject to Federal Insurance Contributions Act (FICA) tax withholding as provided by IRC sections 3101 and 3111, if paid \$100.00 or more in cash during the calendar year from one employer.

Remuneration paid to a statutory home worker is exempt from the Federal Unemployment Tax Act (FUTA) tax, is not subject to federal income tax withholding on wages, and is not eligible for voluntary federal income tax withholding. For further information on home workers, see IRS Publication 15, Circular E, Employer's Tax Guide and Publication 15-A, Employer's Supplemental Tax Guide.