Form **14430-A** (July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Business/Computer Services/Office/Sales	☒ 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 worker submitted a request for determination in connection with services performed for the firm in 2024 as a maintenance worker. Services performed included cleaning properties and building additions. The worker filed Form SS-8 as they believe they received Form 1099-NEC in error. The worker believes they were an employee as the worker completed an application for the job. This was the worker’s first job and had no prior experience or proficiency in this trade.

The firm’s response stated its business performs land beautification services and utilizes laborers to complete those services. The worker was engaged as a laborer. The firm did not state what the worker’s duties were. The worker was classified as an independent contractor as the worker did not have a set schedule. The firm provided the worker’s signed Form W-9, Request for Taxpayer Identification Number and Certification, which documented their Social Security Number.

The firm did not state if there was any training or instructions provided for the worker. The firm provided work assignments and determined the methods by which those assignments were performed. If problems or complaints arise, the firm would be contacted as well as responsible for resolution. The firm did not require the worker to complete and reports. The worker was not required to attend any meetings. Services were performed on both the firm’s and the firm’s customers’ premises on an as-available basis. The firm required the worker to personally perform services. The firm was responsible for the hiring and paying of substitutes or helpers. The worker stated there was no training or instructions provided by the firm. The firm provided work assignments and determined the methods by which those assignments were performed. The firm was responsible for problem resolution. The worker was required to attend staff meetings. Services were performed on as-needed basis. There was no penalty for non-attendance.

The firm stated they provided the worker with a mower and tools. The worker did not provide any of the supplies, equipment, or supplies that were needed to perform services. The worker did not lease space, equipment, or a facility. There were no expenses incurred by the worker performing the services for the firm. Customers paid the firm. The worker was paid an hourly rate of pay. The worker could not request advance pay. The worker did not take a financial risk ad could not suffer a financial loss performing services. The firm did not state who set the rate of pay for the services provided. The firm did carry workers’ compensation insurance on the firm. The worker stated the firm set the rate of pay for the services provided.

The firm stated there were no benefits made available to the worker. Either party could end the work relationship without penalty. The worker did not perform similar services for others during the term of the work relationship. There were no agreements prohibiting competition. The worker did not advertise their services. Services were performed under the firm’s business name. The worker is no longer performing services for the firm.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In the case the firm required the worker to personally perform services. The firm provided work assignments, determined the methods by which assignments were performed, and ultimately assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

The firm's statement that the worker performed services on an as-needed basis and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants.

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. In this case, the worker did not invest capital or assume business risks. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. As acknowledged by the firm, the worker did not take a financial risk and could not suffer a financial loss by performing services. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 firm's business. Both parties retained the right to terminate the work relationship at any time without penalty. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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 firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.