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

Department of the Treasury - Internal Revenue Service

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 worker submitted a request for determination in connection with services performed for the firm in 2023 as a framer. Services performed included directing and detailing construction projects and supervising other firm employees. The worker filed Form SS-8 as they believe they received Form 1099-NEC in error. The worker believes they were an employee as they were required to wear a company uniform. The worker received directives from the firm. The firm provided company tools and a vehicle.

The firm’s response states its business provides framing, digging, and handyman services. The worker was engaged as a framer. Services performed included framing and setting tresses. The worker was classified as an independent contractor as the firm did not set a schedule for the worker. The firm had reached out to another entity regarding services to be performed and they sent the worker to perform those services. The worker stopped performing services when those jobs were completed. 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 provided a copy of a subcontractor agreement signed by both parties.

The firm stated there was no training or instructions provided to the worker. The worker received work assignments from a separate entity. The firm provided work assignments by explaining to the separate entity what was needed, and the firm sent the worker to perform those tasks. If problems or complaints arise, the worker and the separate entity would be contacted as well as responsible for resolution. There were no reports or meetings required of the worker. Services were performed on the premises of the job location. The firm did not require the worker to personally perform services. The worker was responsible for the hiring and paying of substitutes or helpers. The worker states they received instructions regarding the services to be performed. The firm provided work assignments in a variety of ways including a phone application that the worker also used to clock in and out. The firm determined the methods by which those assignments were performed. The firm was responsible for problem resolution. Reports and meetings were required. The worker was required to upload photos on daily progress thou the phone application. The worker was required to personally perform services. The firm was responsible for the hiring and paying of substitutes or helpers.

The firm stated they provided the materials needed to perform services. The worker provided tools, supplies, and labor. The worker did not lease space, equipment, or a facility. There were no job-related expenses incurred by the worker in the performance on the services for the firm. The worker was paid a piece work rate of pay. The worker could not request advance pay. The worker did take a financial risk and could suffer a financial loss performing services. Both parties agreed to the rate of pay for the services provided. The firm did not carry workers’ compensation insurance on the worker. The worker stated the firm provided the supplies, equipment, and materials needed to perform services. Customers paid the firm. The worker was paid an hourly rate of pay. The worker did not take a financial risk and could not suffer a financial loss performing services. The firm set the rate of pay for the services provided and products sold.

The firm stated there were no benefits made available to the worker. Either party could end the work relationship without penalty. The worker performed similar services for others during the term of the work relationship. The worker advertises their services. There were no agreements prohibiting competition. Services were performed under the worker’s name. The work relationship between the aperies ended when the contract was completed. The worker stated services were performed under the firm’s business name. The firm ended the work relationship.

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, the firm's statement that the worker was an independent contractor pursuant to an oral 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.

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. In this case, while the firm states they contracted the worker from a separate entity, the worker provided their services on behalf of and under the firm’s business name rather than an entity of their own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their customer. 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.

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. Based on the piece work 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 general 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.