

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW Repair/Maintenance Worker	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 finds the firm is a home care, cleaning, maintenance business, for people that have second homes. They inspect and provide services to their clients as requested. The worker performed services for the firm from 2010 through 2016 as a house cleaner. The firm has reported the income on Form 1099-MISC consistently, stating the people are independent contractors. The firm has indicated they ask each contractor to respect the home of their clients and not smoke or bring pets. Each client gives a list of services they want performed, they pass that along to the contractor. Each week the contractor is e-mailed a work order. Details are given on the work orders, they let the firm know if they want the jobs. If there is no response they assume the answer is yes. The worker would contact the firm with any issues or complaints. The firm would handle the issue with their client and the solution was given to the contractor. The firm stated as a courtesy, the firm allowed the contractor to use the work orders as their invoices. The work order describes the time frame the clients needs something done. the worker determined how and when it is performed. Approximate dates are put on the work form to be able to give the client an idea of when it can be done. A date is also on the work order of when the client prefers it to be done. The firm stated they invited the contractors to a yearly voluntary meeting to get input on their clients. the firm stated the clients provide the trash bags, washing soaps and some specialized cleaners. The worker provided their own cleaning equipment. The worker is paid by the hour, at a rate agreed upon for each client. the firm pays a laundry mat fee if the worker choses to use them, but then is charged to their client. the client paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker did perform similar services for others. The firm stated there was not enough work to schedule and the worker was let go.

The worker indicated they were trained to clean a certain way the firm wanted it done. They are sent a weekly schedule on Sundays that gave the days and times the houses were to be cleaned. The worker agreed she reported to the firm if there were any issues. Reports were given to the firm if there was any damage to the properties, or how long a house would take to clean. The worker indicated the firm had a vacuum on hand as well as mops and cleaning supplies. She also provided her own cleaning supplies. The worker agreed the firm reimbursed them if they went to the laundry mat. the worker agreed she was paid by the hour. And a Fifty dollar bonus at the end of the year. The clients paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated she was fired.

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.
 -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.
 -Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in

Analysis

-If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship.

-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.

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. All work was performed under the firm's business name, for the firm's clients. The work schedule was e-mailed for the week on Sunday as to the homes to be cleaned. The fact the worker was free to determine order in which she did it, does not make her an independent contractor. Documentation provided shows the firm e-mailed and directed instructions and directions to the worker. The firm determined the rates charged to the clients for the services performed. The clients paid the firm directly for those services. The worker was paid by the hour for the work performed. The fact she may have purchased cleaning supplies, would not have been deemed a financial business investment, but tools of the trade. The firm's website clearly states their employees are highly trained professionals. It clearly outlines the services provided and the rates and packages available.

For some of the years in question, it is possible that the statute of limitations has expired for the assessment of taxes in this matter. If so, it will not be necessary for you to amend your return(s). Internal Revenue Code (IRC) section 6501(a) provides that the statute of limitations for assessment generally expires three years from the due date of the return, or three years after the date the return was actually filed, whichever is later. IRC section 6501(b)(2) provides that for certain employment tax returns, the three years would begin April 15 of the following year for which the return was due. IRC section 6511(a) provides that a claim for credit or refund of an overpayment shall be filed within three years from the date the return was filed, or two years from the date the tax was paid, whichever expires later.