

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

Occupation 03PMW Auto Technician	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**

The firm is an auto repair service business that engaged the worker to perform services as an automotive mechanic. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker received instructions on how to tighten bolts, where to place tools, and how to wind up power cords. The firm provided work assignments according to priority. The firm and worker both determined the work methods used to perform the services. Problems the worker could not resolve were reported to the firm for resolution purposes. The firm required the worker to perform his services personally, at its shop location. Services were performed for the firm's customers, during the firm's business hours.

The firm provided the worker with the shop facilities, air compressors, vehicle lifts, power tools, parts and supplies needed to perform the services. The worker provided his own tools of the trade, and transportation used to and from the firm's shop, and to pick up parts and supplies when needed. The worker did not incur work related expenses, nor did he incur economic loss or financial risks related to the services he performed for the firm. The firm paid the worker on an hourly wage basis. Customers made payment to the firm for services rendered.

The worker was not covered under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not to perform similar automotive services for others, nor did he advertise his services to others. The firm provided a copy of the worker's business card to show that the worker did operate his own small engine (mowers) repair business. The firm further noted that the worker was allowed to use the firm's shop to perform services for his business, and that customers sometimes paid the worker directly for his services.

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**Analysis**

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally at the firm's location. The worker used the firm's facilities, equipment, tools, and supplies and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov)