

SS-8 Determination—Determination for Public Inspection

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| Occupation 03PMW Repair/Maintenance Workers | Determination: <input type="checkbox"/> Employee <input checked="" 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 a auto and truck repair business and the worker was a mechanic. The firm engaged the worker through a verbal referral to perform repair and maintenance services for the firm's business customers and the worker's personal customers. A verbal contract labor agreement was entered into. The worker signed a Form W-9 and agreed to work at the firm's place of business during the firm's hours of operation fixing both his customers and the firm's customers vehicles. The firm did not provide the worker with any training due to the workers' prior experience. The firm assigned the worker the firm's customer jobs when requested by the worker. The worker performed services according to job priorities. The worker would contact the firm regarding problems or complaints the worker could not resolve for final resolution. The worker set his own schedule based on the firm's business hours of operations and jobs needed to be performed. The worker performed services at the firm's place of business and customer locations. The worker performed the services personally.

The firm provided the place of business, equipment, materials, and supplies and the worker provided personal tools and purchased materials and supplies needed to perform personal services. The firm did not reimburse the items purchased by the worker to work on the worker's customers vehicles. The firm paid the worker an hourly wage based on various on-line recommendations for payments for services. The worker's customers paid the worker for services as well and the worker would not turn over the payments to the firm. The firm allowed the worker draws against earnings as needed and requested. The worker could suffer an economic loss and had a financial risk with regard to the services performed for his customers. The worker determined the level of payment the worker's customers paid for the products and services and the hourly wages paid for services performed for the firm's customers.

There were no formal written contracts but a verbal agreement of contractor was entered into. The worker did perform services for his own customers at the same time he performed services for the firm's business and was not required to obtain the firm's prior approval to do so. The worker advertised his services as a subcontractor for the firm's business. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The worker quit to pursue another personal business venture.

Analysis

Based on the autonomy of the working relationship it appears the worker was both an employee for the services performed for the firm's business and an independent contractor for the services the worker performed for his own customers. The worker was experienced so the firm did not need to provide any formal training. Both the firm and the worker determined the work schedule depending on job priorities of the customers. The firm and worker determined the methods and means used to perform the services. The firm and worker resolved problems or complaints for the customers. The worker performed the services at the firm's place of business and at customers locations. The worker performed the services personally. Both the firm and the worker determined the methods and means in performance of the services.

The firm and the worker both had financial investments in performance of the services. Both parties provided equipment, materials, and supplies needed to perform the services. The worker did not lease space or equipment but was permitted to use the firm's place of business to perform the workers' customers repairs and maintenance services depending on the customers priorities. The worker incurred expenses for products and tools needed to perform the services and the firm did not reimburse any expenses incurred by the worker. The worker was paid an hourly wage based on various recommended resources and invoiced the firm or worker's customers for the products and services accordingly. When the worker's customers paid the worker the firm did not require the worker to turn over the full amount to the firm. When the firm's customer paid the worker the full amount was required to be turned over to the firm. The worker could suffer an economic loss and did have financial risks with regard to performance of the services for the worker's customers. The worker determined the level of payment for the products and services performed for the worker's customers and the firm determined these issues with regard to the firm's customers.

There were no formal contract but a verbal independent contractor agreement was entered into and the worker completed a Form W-9. The worker advertised his services being performed at the firm's business location and did perform services for his own customers while performing services for the firm's customers. The firm did not require the worker to obtain the firm's prior approval to do so. The firm referred to the worker as a subcontractor performing services at the firm's business location for the firm's business operation. Both parties retained the right to terminate the working relationship at any time without incurring any liability. The worker quit to pursue another personal business venture.