

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Repair/Maintenance Workers

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 a determination of worker status in regard to services performed for this firm, from January 2015 to October 2015, as a mechanic. The firm issued the worker Form 1099-MISC for the year in question. The worker filed tax Form SS-8 as he believes he received the 1099-MISC in error.

The firm's response, signed by owner, states the business specializes in landscaping. The firm states that the worker performed services as a mechanic. The firm classified the worker as an independent contractor due to the worker providing basic hand tools. There was no written agreement between the two parties.

The firm states that they provided no instruction or training to the worker in regard to mechanical job responsibilities. The worker was given work assignments depending upon their skill level and availability. The worker determined the methods by which job assignments were performed. If problems would arise during job responsibilities, the worker was required to work with the firm for problem resolution. The firm states that the worker was required to give verbal reports. The firm states that the worker's duties were split between the shop and customer's premises. The firm states that there were no meetings required and that the worker was required to perform all services personally. If helpers or substitutes were required, the firm would be responsible for hiring and paying them.

The firm states that they provided the worker with their workspace, work truck, and service unit. The worker was required to provide tools and a toolbox. The worker did not lease any space, equipment, or facilities to do their job. The firm states that tools and supplies were the only expenses that the worker incurred during job duties. The firm did not reimburse the worker for any expenses. The worker was paid an hourly wage and did not have access to a drawing account for advances. The customers paid the firm directly for all services rendered by the worker. The firm did not carry worker's compensation insurance on the workers.

The firm states that they did not provide the worker with any benefits. The work relationship could be terminated by either party without incurring loss or liability. The firm states that the worker did not perform similar services for other firms at the time they worked for the firm and they did not require approval from the firm to do so. There were no agreements prohibiting competition between the firm and the worker. The worker was not a member of a union. The worker was represented as a member of the firm to its customers. The worker 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 they have 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, co-adventurer, agent, or independent contractor must be disregarded. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

Therefore, the payer's statement that the worker was an independent contractor 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.

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 this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided work assignments by virtue of the customer served, required the worker to report on services performed, and 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.

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. In this case, the instructional services performed by the worker were integral to the payer's business operation. The payer provided work assignments by virtue of the clients served, determined the methods by which assignments were performed, and assumed responsibility for problem resolution. These facts evidence the payer retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the payer. Based on the worker's education, past work experience, and work ethic the payer may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the payer 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 payer 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 payer 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 rate of pay arrangement the worker could not realize a profit or incur a loss.

Based on the above analysis, we conclude that the payer 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 payer can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.