

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Maintenance Technician

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 stated the owner trained him, the firm responded, that the worker grew up helping him. The worker stated he received his assignments orally, the firm stated there was a routine schedule, the firm added the methods these assignments were performed were agreed upon as partners. If problems or complaints were to arise the worker stated he was able to handle this due to prior training and experience, the firm agreed and stated the worker was a partner of the firm and could handle any problems. The firm stated no reports were required, however the worker stated he reported by phone or text message. The worker stated his daily routine started at 9:00 am for 40 hours a week with rare overtime, alternatively the firm stated the worker's daily routine started whenever the worker wanted to and consisted of the worker handling customer care. The worker stated his services were performed 100% of the time at customers locations as assigned by the firm, the firm responded that the worker could work from home but got supplies from the firm's headquarters. Both parties agreed that meetings were not required, however the firm stated informal talks did occur, the worker offered that there was an expectation of routine communication and to effectuate performance of work orders. Both parties agreed the services provided were performed personally by the worker. If substitutes or helpers were needed the firm stated the worker would occasionally bring in friends or family, the firm stated this did not need approval, however the worker disagreed and stated approval by the firm was required. The firm was responsible for paying any substitutes or helpers. The firm responded that they provided headquarters, utilities, and supplies to the worker in addition the firm indicated transportation, but it is unclear who supplied that service. The worker stated the firm provided a uniform. The worker stated he incurred no expenses in the performance for the firm, however the firm responded, "all gas and vehicle maintenance were supplied by the firm for partner's vehicle for personal use as well", the firm added that expenses for a work uniform was reimbursed. Contradictory to the firm's statement, the worker responded that he reimbursed the firm for gas when using the vehicle for personal use. The worker stated he received an hourly wage, however the firm responded that the worker received a salary in addition to any new business sales and profit. The worker stated he was not allowed a drawing account for advances, alternatively, the firm responded that the worker received profit splitting and many advances against his salary. The worker stated the customers paid the firm, while the firm responded that the customers pay both the worker and the firm using a credit card processor that was linked to the firm's business account. The parties agreed that the worker would not incur a significant loss or financial risk beyond the normal loss of salary. The worker stated the firm established the level of payment for products sold, while the firm responded that the worker could negotiate for services, however products were determined by the market price. The firm stated the benefits available to the worker were a salary, profit sharing and overtime, the worker stated paid vacations were available to him. The worker stated either party could terminate the relationship without incurring a liability or penalty, the firm responded that the worker had been "gifted" 10% partnership as a bonus which he was able to sell. The firm stated the worker was performing similar services for others during the same time period as indicated on Part 1, line 1 and did not need the firm's approval to do so, the worker disagrees with the firms response and stated he was not performing similar services for others during this time. The worker stated there was a non-compete agreement which he signed as a minor in 2002. The firm responded that as a partner there had been a 2 year non - compete agreement in place but that was dissolved, and the worker owned 10% of the business. Neither party submitted documentation. The worker stated he did not advertise for the firm other than having business cards with the firm's name, alternatively, the firm stated the worker had business cards listing the worker as a partner, neither party submitted documentation. The firm stated they represented the worker to its customers as a partner, however the worker disagreed and stated he was represented under the firm's business name. The parties disagreed on how the worker relationship ended, the worker stated he gave 2 weeks' notice, the firm responded that the worker quit without notice.

Analysis

Often because of the nature of the occupation it is not necessary that the worker receive extensive training, instructions or close supervision, the control factor is present if the person or persons for whom the services are performed retain the right to do so. Although the worker may not have been supervised directly while performing his services, this is not enough to characterize his relationship as a contract worker. The worker performed personal services on a continuous basis. The firm provided all significant materials to the worker. Thus, he did not have a have significant financial investment in the firm's materials. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry enough weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. This is a strong indicator that the worker is not an independent contractor. We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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.