

SS-8 Determination—Determination for Public Inspection

Occupation

03PMW Maintenance

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 firm engaged the worker as an employee from 1/2019 until 2/2020. The worker was a tenant of the firm's properties and was hired when the manager of the properties approached the worker to ask if the worker was interested in performing services for the firm. A few years back the worker did perform a small repair and built a small deck. The service performed was with the previous owners. As per the firm, the worker was hired because services were performed under the previous owner. The firm suggested that the worker is an independent contractor due to the fact that the worker signed a Form W-9 and the worker performed services at times selected by the worker.

Both parties agreed the worker did receive instruction from the firm. Both parties agreed the worker received instructions regarding the services to be performed by the firm. Assignments were given daily, verbally on the phone, in person or via text message to the worker from the firm. The worker performed services on various days and at various times. Services were performed on the firm's premises. Both parties agreed the firm was responsible for problem resolution. The worker was required to submit any concerns about the work to be done, the extent of the repairs, the cost and the best repair options. The worker was required to attend occasional meetings whenever the firm requested. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. Services performed by the worker were an integral and necessary part of the services the firm provided to its customers. Both parties agreed the firm would have to approve any substitutes or helpers hired to replace the worker. Both parties mention that the worker is able to hire the helpers as well. Both parties agreed the firm would have reimbursed the worker for the substitutes the worker hired.

A furnished office space and equipment needed to perform services was provided by the firm at no expense to the worker. The firm stated the worker would be reimbursed if materials for the job were purchased. The worker did not incur any significant business expenses. The firm determined the fees to be charged. The firm's customers paid the firm. A monthly check based on the totals of the services performed was paid to the worker. The firm did not carry worker's compensation insurance on the worker.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party may terminate the worker's services at any time without incurring a penalty or liability. The worker was not a member of a union. According to internal research, the worker did not perform services for others. No advertising was done by the worker for services performed. No office, shop, or other place of business was held by the worker to indicate a business presence. The worker was required to perform the services under the name of the firm and for the firm's clients. However, the firm mentioned the worker performed services under the workers name. The relationship between the parties ended when the firm sold the properties.

Analysis

The worker performed personal services on a continuous basis. The worker performed services/repairs on units that the firm specified. Work was performed on the firm's customer's premises, on a schedule set by the firm on various days at various times. All significant materials and workspace was provided to the worker by the firm. If materials needed to perform the services needed were purchased by the worker, the firm would reimburse the expense to the worker. The worker could not incur a business risk or loss. A monthly check was paid to the worker totaling the tasks performed during that time period. The worker did not hold the services out to the general public. The worker did not advertise ,hold a shop, store front or place of business at that time to indicate a business presence.

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 sufficient 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. This is a strong indicator that the worker is not an independent contractor.

A Form W-9 was signed. A Form W-9 is an information form requesting taxpayer identification and certification. Therefore, this does not indicate the worker to be an independent employee.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.