

SS-8 Determination—Determination for Public Inspection

Occupation 03PMW.157 RepairMaintenanceWkr	Determination: <input type="checkbox"/> Employee <input checked="" type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is operating a property maintenance and inspection business for customers. The firm engaged the worker to perform inspection and maintenance services for the firm's business. The firm provided the worker with new worker training on what pictures are required by each client and how to write their closing e-mails. The firm assigned jobs via email. The firm and worker determined the methods used to perform the services. The worker was required to contact the firm regarding problems or complaints for resolution and the firm resolved them. Per the firm no reports were required and the worker indicated pictures and work reports were required to be provided through e-mail. The worker's work schedule varied based in job requirements. The worker performed services at the firm's customers locations and from home. The worker performed the services personally and per the firm and worker was not required to do so. The firm and worker disagreed on who hired and paid substitutes or helpers.

The firm provided locks and the worker tools, equipment, and materials. The worker did not lease anything. The worker incurred expenses for materials, rental of equipment, and tools etc. The firm reimbursed some expenses if over \$150 per the worker. The firm paid the worker by the job. The firm provided the worker with a credit card to purchase materials was indicated to advances allowed by the firm. The customers paid the firm. The firm did not carry workers' compensation insurance. The individual who won the bids determined the level of payment for the services. The risk of loss or damages of equipment, tools etc. was indicated to economic loss and financial risk question by both the firm and the worker.

There was a contract provided by the firm. The firm did not know if the worker performed similar services for others while performing services for the firm or advertised as a business. The worker stated no similar services were performed for others and no advertising was done as a business to the public by the worker. The firm represented the worker under the firm's business name per the worker and per the firm as a contractor by his name . Both parties agreed the working relationship could be terminated at any time without incurring any liability.

The contract indicated the worker as a vendor with his address as the place of business. The relationship would be determined by work orders and the scope of work in them. The worker would furnish labor, equipment, tools, some materials, scaffolds, permits, transportation, and field supervision to complete jobs in a workmanlike manner all and everything called for in the work order and other work that may be reasonably implied. The worker or job foreman would supervise the jobs. The firm would pay the vendor the price in full and complete payment for all amounts due on the work order pursuant to the vendor. The vendor would promptly pay the firm for any damage or loss that the firm may sustain as a result of vendor's performance or failure of performance. The vendor guaranteed all equipment and material supplied by the vendor for quality purposes and would at its own expense promptly repair or replace any work, equipment, or materials that fail to function properly for a period of 1 year after the completion date or period specified in the agreement whichever is longer. The contract also addressed termination, liability, and other job related issues between the firm and vendor. The contract was signed by both parties on 1-1-2014.

Analysis

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm did not retain the right to change the worker's methods and to direct the worker. The various work agreements were addressed in the contract for services and as long as the worker referred to as the vendor performed the services according to the work orders the firm did not retain the right to direct and control what, how, when, and where the worker performed the services. The worker had business investments, experience, and control over the agreed upon work orders and costs associated with performance of them. In this case, the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the worker over the services performed for the firm.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker invested capital or assumed business risks, and therefore, did have the opportunity to realize a profit or incur a loss as a result of the services provided. The worker provided the business, equipment, materials, and supplies agreed too in the contract. The worker hired and paid substitutes or helpers as needed and supervised the jobs accordingly. The worker guaranteed the materials and services according to the agreement. If one worker hires, supervises and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status. These facts evidence financial control by the worker over the services performed for the firm.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was engaged in an independent enterprise and entered into a work agreement to perform services according to the agreement for the firm's business. The worker had investments in the jobs performed, and control over the costs. The worker controlled profit and loss with regard to the services performed under the agreement. The worker performed similar services for others and was not required to obtain the firm's prior approval to do so. The relationship could not be terminated at any time without incurring a liability according to the agreement.

Based on these factors we have determined that the worker was an independent contractor in the working relationship for federal tax purposes.