

**SS-8 Determination—Determination for Public Inspection**

Occupation 03PVW Photography/Video Workers	Determination: <input checked="" type="checkbox"/> Employee <input 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**

Information provided indicated the firm is a film production company. The worker performed services on one project as 1st cameraman. He feels he is an employee, as the firm had control over the hours of work, and location of work. The crew was given a call sheet, (copy provided) as to the schedule of the shoot. The Producer and Director, determined how the work assignment was performed. The hours were different every day, determined by the call sheet, cleaning camera equipment, building camera equipment, keeping it powered on and ready to record, keeping the picture in focus, breaking down the camera equipment to store at the end of the work day. Services were performed at the camera rental house five percent of the time and at the film Ranch/studio/various locations the rest of the time. He was required to perform his services personally. The firm provided all camera equipment. He did not lease anything. He indicated he was paid by the hour. The customer paid the firm. Either party could terminate without incurring a penalty or liability. He did not perform similar services for others during this time period. He indicated the job completed.

The firm indicated the worker was hired as 1st Assistant Cameraman. He was hired by the principal photographer who established his pay rate. The firm indicated he is a professional Assistant Cameraman, and provided a list of his films he has worked on. The firm attached a copy of the Freelance Crew Agreement contract. The worker performed services under the direction of the Independent Principal Photographer, who chose him as his assistant. The firm agreed services were performed at various locations. The firm indicated the Independent Principal Photographer provided the camera equipment. The worker was paid the contract agreed amount, set by the Independent Principal Photographer. Either party could terminate the work relationship without incurring a penalty or liability. The finished work is property of the firm. He is referred to as a contractor as he works under his own name. The job completed, his services were no longer required.

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## Analysis

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We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

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 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.

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 not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

## CONCLUSION

Based on the above analysis, we conclude that the firm 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 worker was required to be on set at required times, determined by the call sheet provided by the firm, indicating the firm had priority over his time. The equipment was provided by other parties and did not belong to the worker, indicating he had no financial investment in the services provided. He was paid by the hour, indicated no opportunity for profit or loss.