

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

Occupation

03TEC 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 firm, in the business of antique auto restoration, engaged the worker to perform services as an Automobile Fabricator/Builder. There was no written agreement between the parties. The worker reported that he believes he was an employee because he used the firm's tools, in the firm's shop, for an hourly wage, according to a set schedule, using the firm's truck to get back and forth to work. The firm reported that the worker was an independent contractor because it was explained to the worker in the beginning of the relationship that he would be an independent contractor, not an employee, and that he could come and go as he needed.

The worker reported that the firm instructed him on how to fabricate and build cars. The firm, however, reported that the worker was given a general description of what needed to be done, and that the worker was free to use his own discretion with regard to how to complete each assignment. The worker received all work assignments directly from the firm. The worker did not independently solicit work from customers. The worker reported that the firm determined the work methods used. The firm, however, reported that the worker determined his work methods independently. The worker was required to notify the firm about any problems or complaints that arose, and the firm was responsible for the resolution of all such matters. The worker was required to submit reports to the firm in the form of weekly time sheets used to record and report the worker's work hours and his work accomplishments.

The worker reported that he worked for the firm according to a set schedule of 9:00 a.m. to 6:00 p.m. plus additional hours (including weekends) in order to meet deadlines, and that he did not receive over-time pay. The firm reported that the shop opened at 8:00 a.m. and that the worker was free to work there for as many hours as he chose. The firm further reported that the worker was free to come and go as needed. All of the worker's services were performed on the firm's premises. The worker reported that he was required to attend some monthly meetings. The firm, however, reported that there were no meeting requirements. The worker was required to provide the services personally. It was the firm's responsibility to hire and pay any substitutes or helpers. The worker was not allowed to hire and pay any substitutes and/or helpers on his own.

The firm provided all supplies, equipment, materials, and property needed by the worker. The worker provided only his work clothes and services. He did not lease any equipment, space, or a facility. He did not incur any work-related expenses. The firm's customers made their payments directly to the firm based on prices, terms, and conditions determined by the firm. The firm paid the worker by the hour. The worker did not bid on jobs and did not issue bills or invoices to the firm. Payments made to the worker were made payable to the worker's name as opposed to a business name. The worker did not have a financial investment in the firm's business or in any other business related to the services provided.

The worker reported that he received vacation pay; however, the firm indicated this was not the case, but that the worker was occasionally given additional payments, depending on workmanship. The worker indicated that he did not receive additional payments related to the work he did. Both parties retained the right to terminate the relationship without incurring liability or penalty. The worker reported that he did not perform services of a similar or related nature for others during the engagement period of this work relationship. The firm reported that the worker provided similar services for others during this time period; however, no documentation has been submitted or discovered through research to support the firm's contention in this respect. The worker did not advertise availability to provide services, subscribe to a business listing in a telephone directory, or maintain a commercial business office or shop of his own. The worker operated under the firm's business name. The worker's relationship with the firm was carried out on a continuous basis, as opposed to for a single occasion or infrequent occasions. The services performed were integral to the firm's regular business activities.

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## Analysis

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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. While the worker may have independently developed many aspects of the methods used to complete assignments, the firm ultimately retained the right to change the worker's methods and to direct the worker to the extent necessary to protect the firm's financial investment. The worker received all work assignments from the firm and he performed all of his services on the firm's premises. He was not permitted to hire and pay anyone else to do the work for him or to help him with the work. These facts indicate that the firm maintained the right to direct and control the behavioral aspects of the work relationship.

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. The worker was paid by the hour and since all necessities were provided by the firm, the worker did not incur any work related expenses. An independent contractor typically makes a significant investment in his or her business and incurs significant expenses. These facts indicate that the firm maintained the right to direct and control the financial aspects of the work relationship.

Factors that illustrate how the parties perceive their relationship include 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability. The worker contends that he did not provide the same services for others during the engagement period of the relationship and that he did not advertise desire and availability to do so. There is no evidence to the contrary regarding this factor. Independent contractors typically provide their services for a multitude of clients and advertise their businesses. The services performed by the worker were a necessary and integral part of the firm's business. The above factors do not reflect a business presence for the worker, but rather strongly reflect the firm's control over the worker and the integration of the worker's services into the firm's business.