

SS-8 Determination—Determination for Public Inspection

Occupation

03TEC HVAC 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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is in the business of servicing and installation of HVAC systems and the worker was engaged from January 2016 to January 2017 as a service technician. The worker's duties included servicing, repairing, and installing of HVAC equipment. The firm believes the worker was an independent contractor of their company because he received jobs via email and he did all of his scheduling for himself, he used his own tools, made his own schedule, and reported his own taxes. The firm did not withhold employment taxes from the worker's earnings.

The firm states they trained the worker on how to service HVAC systems before he went out on his own. The worker received his assignments via email and the firm states the worker determined how he performed his services. The worker was required to personally perform his services 100% of the time at firm's clients' locations. If a problem or complaint arose, the firm and the worker would discuss the problem together and the worker would then go out and resolve the problems. The firm states the worker's daily routine consisted of getting the clients info via email, calling the clients to schedule each job, and the worker would make his own hours. The firm states the worker was not required to submit reports or attend meetings. The hiring and paying of substitutes or helpers did not apply in this case.

The firm states they provided the work truck and parts for repair to the worker in order to perform his services. The worker provided his own tools. The firm states they reimbursed the worker for gas expenses. The clients paid the firm for services rendered by the worker and the firm paid the worker on a piece work basis. The worker did not have an investment in a business related to services performed and therefore, he did not have an opportunity to incur a loss as a result of his services.

The worker was not eligible for employee benefits. It is unknown to the firm if the worker performed similar services for others. The worker had business cards stating he was representing the firm's business. The firm states the worker was represented as a representative of their company. Either party could terminate the work relationship at any time without either party incurring a liability. The firm states the relationship ended when the worker stopped accepting jobs.

The worker had no responsibility in soliciting new clients.

Analysis

As in this case and 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, the firm trained and instructed the worker in all aspects of the installation and servicing of HVAC systems. After this training, the worker did not require training or detailed instructions from the firm. The need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. The worker was represented to the firm's clients as their technician and the firm provided the worker with business cards. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the worker did not have a set routine or schedule and may be viewed as a characteristic of an independent contractor, the total relationship needs to be analyzed to make an accurate decision of a worker's status. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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 provided tools in order to perform his services, however, this is not considered a significant investment. The term "significant investment" does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.