

SS-8 Determination—Determination for Public Inspection

Occupation

03TEC Technicians

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**

Information provided indicated the firm is a conservation district that performs services for local landowners related to various conservation programs by providing technical assistance with environmental regulations, review of erosion control plans, and provides funding to local municipalities with dirt and gravel road maintenance construction projects. The firm had put out a "Request for Proposals" for a Road Maintenance Field Technician (copy of that proposal was provided). It indicated it was a temporary, grant funded, independent contract position. The pay rate was twenty-six to thirty dollars per hour, based on technical experience. The worker had been retained for that position from May through November of 2015. The firm reported the income on Form 1099-MISC. The firm stated the person would be required to obtain training and certification, prior to obtaining the position which would familiarize them with the construction requirements for the projects. He was provided with the municipal road files that he was to make contact with and schedule times to be at the project sites during construction. He would have contacted the District Manager if there were issues. He was required to provide his site visit reports, times and who he met with on each project, so they would be recorded for the project construction time lines and quality assurance of projects. The firm stated the work schedule varied, based on the projects being worked on at the time. Some services were performed in their office in order to access some of the project files, the rest of the time at project sites and municipalities. Only preconstruction meetings were required. He was required to perform his services personally. The worker would have hired any helpers and paid them. Reimbursed might have happened if the helper was qualified to perform the work. The firm provided access to project files, a camera, GPS unit to record site coordinates and computer to access files. He provided his own transportation. He was reimbursed for mileage. The firm indicated the worker was paid by the hour. Either could terminate the work relationship without incurring a penalty or liability. The contract ended as of December 31, 2015.

The worker stated he was given a manual and other guidance and attended the required training. He stated the file for the 2015 road projects was given to him by the firm. He would then call the contact person on each project. He provided project updates and monthly summaries. He arrive to the firm's office (where he had his own work space) at eight am, reviewed the files for a project, got the camera, GPS and drove to the work site, took pictures and drove back to the office. Work was performed fifty percent in the field, fifty percent in the office. He was required to perform his services personally. He indicated the firm provided all office space, equipment and supplies. He provided his own vehicle. He agreed he was paid by the hour. Either party could terminate the work relationship without incurring a penalty or liability. All project summaries, reports, pictures etc. was returned to the firm and kept on file. He indicated the job completed.

Analysis

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 firm did not request proposals for bids, but rather posted a job opening position. The firm determined the rate of pay and the number of hours worked. The firm obtained the grant funding, which carries specific compliances to be met, therefore giving the firm the right to direct and control the work performed. The worker provided services on firm premises, as well as in the field, was required to submit various reports. The worker was paid by the hour, and reimbursed for mileage and expenses.