

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

The information provided from both parties indicates the firm is in business to sell, service, and install generators. The worker was engaged as a general laborer, to perform such services as site preparation, setting concrete slabs, drilling, and bolting down generators, and converting piping. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker was given on the job training on how to perform the services. Daily work assignments were given by the senior technician on site. The firm and worker both determined the work methods used to perform the services. Work related problems/complaints were resolved by the firm. The firm required the worker to perform his services personally, at customer sites, with helpers engaged by the firm, and paid by the firm for their services.

The firm provided all large tools, trucks, trailer, generator components, and materials needed to perform the services. The worker provided small hand tools. The worker did not incur work related expenses. The firm paid the worker on an hourly wage basis for his services, and customers paid the firm for services rendered. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The worker was not covered under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar service for others, nor did he advertise his services to the public while engaged by the firm. The work relationship was continuous and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's equipment, tools and supplies, and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov