

# SS-8 Determination—Determination for Public Inspection

Occupation 03TEC Technicians	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

This case is a reconsideration request by the firm. The firm contends the worker was not its employee, as initially determined in an earlier case. The firm stated that the worker was not required to attend staff meetings as he was not an employee of the firm. The firm stated the worker did not work full time, that his services were performed on an as needed basis. The firm stated that the worker owned his own business, and that he was allowed to conduct his business operations while performing services for the firm. The firm further contends that if it had considered the worker to have been its employee, the worker's behavior would have been more controlled, and he would not have been afforded the opportunity to conduct outside business while performing his services for the firm.

The firm contends that the worker could not have been its employee as he operated his own business, of which its operations took priority over the services that the worker performed for the firm. Research of this information finds that the worker appears to have been operating a business of his own while engaged by the firm, however the services were not similar to those performed for the firm. The worker's business appears to have been seasonal in nature. The firm appears to have engaged the worker's services on an as needed basis, and when the worker was available to perform services. Whether someone performed services full time, part-time, or on an as needed basis, does not determine worker classification. It is the actual work relationship that determines worker classification for federal employment tax purposes.

A review of the firm's initial information (Form SS-8 and additional information) regarding this work relationship finds that the firm is in business to sell and service commercial fitness equipment. The worker was engaged as a laborer to install and service fitness equipment at the firm's customer locations. The firm's lead technician provided the work assignments, determined the work methods by which to perform the services, and was to be contacted regarding problems or complaints that needed resolution. The worker was not required to perform his services personally. Helpers and/or substitutes would have been engaged by the firm's lead technician, or the firm's owner. The worker was not required to provide the firm with reports regarding his services, nor was the worker required to attend meetings.

The firm stated that it provided the assembly tools and shop vacuum needed to perform the services. The worker provided nothing, and he did not incur work related expenses. The firm paid the worker on an hourly wage basis for his services. Customers paid the firm for services rendered. The firm did not provide information to support that the worker could have incurred economic loss or financial risks related to the services he performed for the firm.

The firm further stated that the worker was not covered under workers' compensation insurance. Employment benefits were not made available to the worker. The firm stated that the worker provided similar services for others, but did not provide information to support this statement. The firm further stated that the worker did not advertise his services to others while engaged by the firm. The work relationship could have been terminated by either party at anytime without incurring liabilities; the work relationship ended when the firm no longer required the worker's services.

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**Analysis**

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The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker performed his services for the firm's business, following its work methods, schedule, and routine. The worker performed his services at locations designated by the firm, for its customers, using the firm's equipment, tools and supplies. The worker represented the firm's business 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 business operations, and 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 hourly wage based. The worker did not have the opportunity for profit or loss as a result of the services he performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his/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 that the worker had an investment in facilities.

With regard to the relationship/intent of the parties, the worker performed services as requested by the firm for an indefinite period of time, and the parties agree that each 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 providing similar services for others. In fact the parties agree that the worker did not advertise to others as being in business to perform similar services. The facts of this case evidence that the worker's services were performed 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 available information, the worker is determined an employee of the firm for federal employment tax purposes.