

SS-8 Determination—Determination for Public InspectionOccupation
03TEC TechnicianDetermination:
☒ 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 locates water leaks and private utilities. The worker performed services in 2017. The worker indicated he was a partner of the firm and should have received either a Form 1065 or Form W-2 for the wages earned. The firm stated the worker requested not to have taxes withheld, therefore issued Form 1099-MISC at year end. This determination will determine if he was an employee, since there appears to be no legal documentation proving he was a partner of the firm.

The firm has indicated he worked as a service technician. The worker was able to make his own hours. He took time off when he needed. Jobs were called into the office and put on the work calendar. The worker chose the jobs he wanted to do each day. The firm indicated there had been a mutual agreement between parties. The worker was responsible for the work performed. He submitted invoices for the completed jobs. The work schedule was determined by the jobs he chose. Work was performed at the customer locations all over the state. He was required to perform his services. The firm indicated it provided the uniforms, invoices, specialty tools and expendables, like paint and batteries. The worker provided transportation, hand tools etc. The firm indicated the worker leased camera equipment. (a copy of that lease was provided, it was under the firm's business name, and the worker signed it as owner of the firm.) All expenses incurred were reimbursed by the firm, such as fuel for vehicle, hotel expenses for out of town work, extra equipment etc. The worker was paid via draws and checks in the amount of requested upon start of firm. He was guaranteed eight hundred per week, not commission. The firm indicated the worker received two draws. The customer paid the firm. The firm stated they did carry workmen's compensation insurance. The firm indicated they have a price sheet for work performed. The firm indicated no vacation pay or other pay was agreed upon. There was a weekly check. Either party could terminate the work relationship without incurring a penalty or liability. He did not perform similar services for others. The worker was represented as a service technician of the firm. The firm stated he quit in 2017. They had planned on making him partner at the beginning of 2018. He did not want to wait.

The worker stated he was partner/locator of the firm. He went into business as a partner and drew a draw check until August, treating him as a partner. In September they started taking out taxes, but he never received the paperwork adding him as a partner. Work assignments were via text, and phone calls. He also answered the phones when no one else was available. Invoices were completed at the time of services and turned into the other owner of the firm. All work was performed at the customer location. He indicated he was on call 24/7 and worked as the jobs came in, as it was a new company. Meetings were held to discuss the work and assignments. The worker indicated as a partner he purchased a truck, camera and other equipment to be used by the firm. He indicated he was paid a partners draw. He agreed the customer paid the firm. He agreed the firm did carry workmen's compensation insurance. He indicated he was a partner of the firm in the beginning, and all work was done under the firm's business name. He stated the relationship did not end well, they split and he went into business for himself.

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. Since there had been no official paperwork drawn at the inception of the business, to designate the worker as a legal partner (required), and the firm's legal owner indicated he was a service technician for the firm, we find the worker was an employee of the firm. All work was performed under the firm's business name, (to include leased equipment by the worker). The worker was paid on a weekly basis. The firm provided the price rates for all services performed. The invoices were completed under the firm's business name, not that of the worker and all were turned into the firm. The firm stated it provided company uniforms, invoices, equipment, and reimbursed the worker for any expenses incurred.