

SS-8 Determination—Determination for Public Inspection

Occupation 03TRA Tradespersons	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

Information provided indicated the firm is a design, management and construction company. The worker performed services for the firm as a general carpenter, providing what the firm felt was contract labor services. The worker has worked in both capacities as an independent contractor (for the past eighteen years) and an employee on and off for his other company (for the last eight years) which is used for large projects. The firm has reported income on both Form 1099-MISC and Form W-2 under both the firm owners Social Security number and a business identification number.

The firm indicated no training was given by this firm. He had worked for his father-in-laws company and had prior experience. When hired as an employee under the firm's other company in 2005 he was given extensive training. The firm indicated design plan creates the construction project. the construction project has stages. The firm lays out the time frame of each stage, each sub knows when their work should be completed. The plan creates work assignments. the firm inspects work to try to keep it in come kind of order. The firm stated it usually is not a problem and he works as a laborer himself on projects. He is asked questions by all subs, as he is normally the designer. No one has to do work his way. The worker turned in his hours to collect his fee, as he set up in the beginning. He was never asked to report on the project as an overseer or an employee. He could work normally between seven an to five pm Monday through Friday. The firm stated that was his choice as he did other jobs other than the firm's. Services were performed at the customer location or at the firm's woodworking shop.

The firm indicated it provided certain supplies, equipment and allowed all sub contractors to use them. The worker provided his own hand tools and transportation. The firm indicated the worker was paid by the hour (he stated the worker set his hours and pay rate). The firm stated the worker negotiated new price per hour for 2014. The worker requested to be paid weekly. At that meeting he asked about being an employee. He was told it would be with his other company and there would be withholdings. When told what the take home would be after taxes, he stated he wanted to remain as an independent. His wife was present at that meeting.

The firm stated the worker could provide the service or not. There was no penalty for not completing any one service. The firm did most of his own work, it just enabled him to get the project done quicker. He left for awhile, with the agreement he could come back. Three months later the firm made contact with him to see if he would be interested in working as an employee for his other firm, he was and a meeting was set. He has his own customer base, and his own upholstery business. The firm went to one of his customers and helped him build a bay window. The firm has referred him to other customers also. When the firm hired another person to assist on a project, the worker left and didn't come back for three months.

The worker filed the request for services performed in tax year 2014. The worker agreed he performed general labor services. He agreed he hung vinyl siding on and off from 1996 through 2002. He indicated he had been instructed how to do most any and all jobs performed. Verbal instructions were given from the firm owner. The worker indicated he reported to work at eight am and worked until the owner said it was time to face off. He usually worked eight to five Monday through Friday. Services were performed at the customer location or at the firm's shop. He indicated he was required to perform his services personally. The worker agreed the firm provided all equipment, materials and supplies. He stated he was paid by the hour, and the customers paid the firm. He had indicated he was given paid vacations. Either party could terminate the work relationship without incurring a liability or penalty. He indicated he was represented as an employee and laid off by the firm.

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. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

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. No evidence was provided to show the worker own and operated his own business. The firm provided materials and supplies, the fact the worker provided his own hand tools does not constitute a financial business investment, more as tools of the trade. The worker was paid by the hour, indicating he was in no position to incur a profit or suffer a financial loss. All work was performed under the firm's business name, for the firm's customers, in the order given by the firm. It is never a matter of choice, to have taxes withheld from one's pay, specific tax laws determined who is an employee and who is an independent contractor.