

SS-8 Determination—Determination for Public Inspection

Occupation

03TRA Tradespersons

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 construction company. The worker who is brother-in-law to the firm, performed services for tax years 2015, 2016, 2017, and 2018 performing heating and cooling repairs and installation, and construction services. The firm indicated there had been a verbal agreement between parties the worker would be performing services as an independent contractor, and would be responsible for his own taxes. The agreement was he would be paid twenty-five dollars per hour. The worker owns his own building company, and heating and cooling company, licensed with the State (copies provided). Therefore the firm issued Form 1099-MISC documents for the years in question. No training was required as he was a licensed residential builder and has three separate HVAC and refrigeration licenses. The firm stated once he had a contract with a customer he would call him to provide the sub contract services. As the primary contractor he would contact the firm if issues arose. He would provide verbal reports as what was completed. The work schedule varied depending on the job. He would often leave to chase parts for his own jobs he had going, and took phone calls pertaining to his business while working for the firm. Often the firm would have to put his work on hold or reschedule, to coincide with his availability. Services were performed at the firm's customer locations. The firm indicated they provided materials. The worker provided all hand tools, and battery operated hand and power tools. He was paid either by piece work or subcontracted hourly rate. The customer paid the firm. The firm indicated it does carry workmen's compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated the worker performed services for his own business throughout the work relationship.

The worker feels he is an employee as he is under constant direction/supervision personally from the firm, every day, all day long. There was never a written contract agreement. The firm attempted to have a contract signed in 2017, after he had performed services for him for three years. The worker stated he refused to sign the agreement. He give a written time card at the end of the day with the hours worked. He gets paid at the end of each week. The firm controls the work schedule. The worker indicated the work is performed as directed and can change at a moments notice. The worker agrees he provides his hand tools, the firm provides everything else. He agreed he is paid by the hour, the customer pays the firm. Either can terminate the work relationship without incurring a penalty or liability. He indicates he is still employed by the firm.

ANALYSIS

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed. Therefore, your statement that the worker was an independent contractor pursuant to an agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties.

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 for the services performed for the firm. Although the worker appears to have a business, no indication the services were performed for the firm via his business. The worker's main income appears to have come from the work performed for the firm. The worker was paid by the hour, and the firm provided all materials and supplies, indicating he had no business operating expenses or financial investment in the services performed. The firm held the contracts with the customer, and the services performed for the firm were an integral part of assisting the firm to maintain his contractual agreements. The worker performed was done so under the firm's business name, and not that of the worker. The worker, not the worker's business was paid.