

SS-8 Determination—Determination for Public Inspection

Occupation

03TRA.51 Laborer/Trades

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm imports and sells modern interior, exterior and closet doors. The firm states the relationship began with the intension the worker would be a recommended installer for the firm for tax years 2012 and 2013. He eventually did warranty repairs, delivers, building storage and show structures, assembly work as well as installations. The firm stated he considered himself a freelance contractor/handyman, installer according to his business cards. He was instructed as to deadlines for project completions. Some instruction was given for closet assembly and door installations since their European style products are not common in the US. Work assignments were given on paper, via phone, text or verbally. The firm stated the worker billed the firm by the hour. So only a total of the hours for the time period he was billing them for. Services were performed depending on his availability; he came and went as he pleased from the location of the assignments. The firm hired and paid for workers. The firm provided the saw and drill press, most materials. The worker provided his own tools. He was paid by the hour. Cash advances were given on a reasonable basis. The customer paid both the firm and worker, since the worker could not accept credit cards. Otherwise the firm stated the customer paid the worker directly. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated they recommended the installer, he used his own name. No new assignments were given to the worker.

The firm provided a copy of the worker's "linked In Page" which states he is the owner of [REDACTED]. The firm provided a copy of the worker's business card [REDACTED]. It also states he is an installer for [REDACTED].

The worker stated he did custom closet door making, delivery driver services, door/hardware replacements and installation services for the firm. He indicated he was supposed to have gotten his contractors license under [REDACTED], but that never happened. He indicated he completed a W-4 in 2013 for the firm and taxes were supposed to have been taken out. He stated he was given work orders and/or verbal work orders from the firm. He was given training on how they wanted the work performed. He indicated he had set work hours, working 10 to 16 hours per day, dependent on the order that needed to be completed. He stated he had deadlines to meet each week. He indicated services were performed on the firm's premises. The worker indicated the firm provided the wood, glass and all materials to fabricate the doors. He stated he was paid by the hour. The customer paid the firm. The firm did carry workmen's compensation insurance. He indicated he received no additional benefits even though he worked holidays, nights and weekends. Either party could terminate the work relationship without incurring a penalty or liability. He was represented as an employee of the firm. He stated he was laid off due to lack of work and told the company would be closing soon.

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

-A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. See, for example, Rev. Rul. 68-598, 1968-2 C.B. 464, and Rev. Rul. 66-381, 1966-2 C.B. 449.

-Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. See Rev. Rul. 70-630, 1970-2 C.B. 229.

-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.

-If a worker must perform services in the order or sequence set by the person or persons for whom the services are performed, that factor shows that the worker is not free to follow the worker's own patterns of work. Often, because of the nature of an occupation, the person or persons for whom the services are performed do not set the order of the services or set the order infrequently. However, if the person or persons retain the right to control the order or sequence of the work, this is sufficient to indicate an employer-employee relationship. See Rev. Rul. 56-694, 1956-2 C.B. 694.

-Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments.

-*** The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship.

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. Although the worker appeared to have attempted to start his own company, he did list he performed services as an installer for [REDACTED]. The services were performed for the firm, the firm provided all materials, the worker was paid by the hour. There is no indication of any other income earned over and above the income reported from this firm.