

**SS-8 Determination—Determination for Public Inspection**

Occupation

03TRA.163 Laborer/Trades

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

Information provided indicated the firm is a professional epoxy coatings company, that installs epoxy, terrazzo, stained-concrete, polished concrete, garage floor coatings etc. The worker performed services as an installer for tax years 2014 and 2015. The firm reported the income on Form 1099-MISC. The firm stated the work was determined on a job by job, day by day basis. The firm stated the worker had experience with epoxy and knew the method of installation. He provided the dates he was available, no instructions were given on when to work other than necessary for the Project Manager [REDACTED], to coordinate with the customer. No meetings were required. If he isn't available the job is postponed or rescheduled. He was paid a daily rate for each job, paid when the job was completed. The customer paid the firm. The firm's policy provided coverage for contractors that did not provide coverage certificates. The firm provided large power equipment and installation products and materials. The worker provided his own hand tools such as trowels etc. The worker was presented to the customer as a contractor. The firm indicated the worker did perform similar services for others; their permission was not required to do so. The firm indicated the job completed.

The worker indicated he had no say over the work schedule, finances, or which job to take. He would call and ask if they needed any help. He would drive from [REDACTED] to [REDACTED] work until three-three-thirty and drove home. Services were performed at different customer locations; they were usually two weeks at each location. The firm hired and paid all workers. The firm provided the grinders, rollers, materials and vacuums. The worker agreed he was paid by the day. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The worker stated he performed similar services for others and agreed their permission was not required to do so. He stated he was represented as a floor mechanic. He stated the job completed.

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 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.

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. 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 the worker had an investment in facilities.

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## Analysis

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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. In the instant case services were performed on an intermittent continuing basis. The firm owns the business, the customer contracts with the firm for their services, at the prices charged by the firm. The customer pays the firm for the work performed. The worker is hired labor to fulfill the firm's customer's needs. The worker did not bid on the jobs, did not purchase the materials to complete the job. Therefore the services are an integral part of the firm's business.