Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation Construction/Technical Services/Trades	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

The worker is seeking a determination of worker classification for services performed for the firm as a technician from January 2021 until July 2025. The worker filed a Form SS-8 because they believe that they were erroneously misclassified by the firm as a 1099 independent contractor without their consent or notification.

The worker believes that they were an employee of the firm since the beginning of the work relationship. They received a salary and a W-2 from 2021 until 2024, and then the firm reclassified the worker in January 2025 to an independent contractor without providing the worker with notification and without a change in job expectations. There were no written agreements between the parties. The worker provided copies of paystubs, checks, and a written explanation of the work relationship. The worker also attached text exchanges between the parties for 2025 where the firm provides the worker with job instructions.

The firm states that they provide services in the automotive industry. The worker provided services for the firm as a mechanic, responsible for performing services on vehicles for restoration, repairing vehicles, or transporting vehicles occasionally. The firm classified the worker as a salaried employee from 2021 until 2024 and then reclassified the worker to an independent contractor in 2025. The worker was requested by the firm to bid each job verbally.

The firm states that there was no training provided to the worker after they were reclassified in 2025. The firm only instructed the worker on what vehicles needed work performed. The firm owner gave the worker job assignments in person, over the phone, and through text messages. The worker determined the methods by which job duties were performed. If the worker encountered any problems or complaints, they were required to contact the firm owner if the complaint came from the worker. There were no reports required of the worker. Services were performed as needed at the firm's premises 75% of the time, 10% of the time at customer locations, and 15% of the time driving buses or transporting vehicles. There were no meetings required of the worker after the worker was reclassified to an independent contractor. The worker was not required to personally perform services. The worker could hire helpers or substitutes without approval from the firm and would be responsible for their payment without reimbursement from the firm. The worker states that the firm did not provide any training. The firm owner provided job assignments to the worker in person, over the phone, and through text messages, determined the methods by which job duties were performed, and assumed responsibility for problem resolution. Services were performed as scheduled at the firm's premises. The firm required the worker to personally perform services. The worker had no hiring authority.

The firm states that they provided the worker with the space to work. The worker provided all tools necessary to perform their job as they had their own personal toolboxes. If parts were necessary, the worker would provide a parts list to the firm. The worker incurred the job-related expenses of fuel and tools that they purchased for their jobs. The firm would reimburse the worker for fuel expenses only. Customers paid the firm. The firm paid the worker on a piecework basis with no access to advance pay. The firm did not carry worker's compensation insurance on the worker. If the worker failed to perform their services, they would not get compensated by the firm. Both parties agreed upon the rate of pay for services performed. The worker states that the firm provided major equipment and materials needed for jobs. The worker provided tools and some equipment as needed. There were no job-related expenses incurred by the worker beyond their own tool costs. The firm paid the worker rates determined by the firm owner. The firm no longer carried worker's compensation insurance on the worker, resulting in a financial risk if the worker got hurt on the job. The firm set the rate of pay for services performed and the price of products sold.

The firm states that they did not provide benefits to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The worker performed similar services for other firms and did not need approval from the firm. There were no non-compete agreements in place between the parties. The worker would drive vehicles home to verify repairs and then return the vehicles to the firm or other party. Services were performed under the firm's name. The worker ended the work relationship. The worker states that they did not perform similar services for other firms or advertise their services to the public. The firm represented the worker to customers as an employee providing services under the firm's name.

Analysis

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.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. In this case, the firm provided the worker with instructions daily as evidenced through text messages. Furthermore, the services performed by the worker were integral to the firm’s business operation of providing automotive services. The firm provided work assignments by virtue of the customers served, provided job assignments to the worker regularly, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, 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 this case, the worker did not invest capital or assume business risks. 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. Based on the piecework pay arrangement the worker could not realize a profit or incur a loss. The worker had no investment in the facilities and did not provide anything for their job duties beyond tools regularly used in their trade.

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 the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker’s services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.