

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN Business/Computer Services/Office/Sales	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 taxi company. The worker performed services as an office manager for tax years 2016 and 2017. In 2016 the firm reported the income earned on Form 1099-MISC. The firm has purchased the business from the worker's family. The firm stated he agreed to keep the worker on in the same capacity and paid him as they had paid him. The firm stated his duties were to oversee the operation of the cab drivers, collecting their daily paperwork and make sure the cabs are clean and in good working order. The firm stated he was given specific tasks to perform, for a pre set rate. There was no schedule or set hours. He was not required to work a required amount of hours. The worker performed his services from a home office. The firm indicated they provided driver daily paperwork forms. The worker was paid a flat fee on a bi-weekly basis. The customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm stated he worked with the cab drivers. His services were no longer needed.

The worker agreed the firm had purchased the company from his family in February 2016. He was hired as a full time manager at that time to oversee the entire taxi service. He received work assignments from the firm owner. He was required to submit paperwork to the firm's business location ever two weeks. he indicated he was on call 24/7 to drive and manage. He agreed he performed services out of his home, which was used for an office for the owner. He was required to meet every two weeks with the firm owner. Services were to be performed personally. The worker indicated the firm paid for all repair of vehicles, gas and all expenses. He indicated he was paid salary and commissions, forty percent plus five-hundred a week salary. The customer paid both the firm and the worker. All money was turned over to the firm. He was represented as manager of the firm. The worker indicated his position was eliminated.

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.

-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.

-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.

-Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a conv

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, and not an independent contractor operating a trade or business. Whether the services were performed without much supervision, the firm retained the right to do so. The worker performed services overseeing the operation of the cab drivers, managing the daily drive logs, maintenance of the vehicles etc. These are integral services necessary for the firm's taxi business. The worker was paid set salary plus commissions. The fact the services were performed from a home office, does not make him an independent contractor.