

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN Tasting Room Manager

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 brewing and distillery company with a tasting room. The worker perform services as the tasting room manager. The firm reported the income on Form 1099-MISC in 2017 and continues to work in 2018. The worker feels he is an employee. The firm stated he performs services four hours per week. The maximum hours per week he works is eight to ten. The firm indicated he picks his own shifts to work on nights and weekends when he was not traveling for his primary job. The firm indicated he received training on how to greet customers, change out kegs and handle any customer issues. The firm determined how he performed the services and was responsible for problem resolutions. All work was performed on firm premises. He was required to perform his services personally. The firm provided the company branded T-shirt. The firm indicated the worker was paid by the hour. The customer paid the firm. The firm determined the rate of pay for the products sold. Either party could terminate the work relationship without incurring a penalty or liability. The worker did not perform similar services for others. The worker continues to perform services for the firm.

The worker indicated he had been transitioned from being a Brand Representative in 2016 to tasting room manager. He was provided training from the firm. Work assignments are given from the firm and changed as needed. He submits a shift report (example provided) at the end of each shift. He would unlock, prepare the days menu, set up seating and tables, assist the bartenders with any needs, and then work the point of sale/cash register, prepare drinks, wash dishes, greet customers etc. He would then lock up at night. All services are performed on firm premises, utilizing the firm's equipment and supplies. He agreed he is paid by the hour and the customers paid 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.

-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.

-A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control.

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. The worker did not own his own business to provide the services. The worker was given training by the firm as to how they expected services to be performed. Services continue to be performed. The fact they are performed on a part time basis, does not indicate the worker is an independent contractor. Nor does the fact the worker selects the availability due to a full time work schedule elsewhere. The services when performed are done so as a representative of the firm, under the firm's business name (and reputation)utilizing the firm's equipment and supplies. The worker is paid by the hour, which also indicates an employer/employee work relationship.

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