

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

Occupation

04MAN 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**

The firm is operating a mobile home rental business and engaged the worker through a contract to perform park management and repair/maintenance services for the firm's park and rentals. The firm assigned the worker jobs to perform in the contract as well as by phone and e-mail. The firm provided the worker with instructions on how to perform services and required the worker to contact the firm for resolution of problems or complaints. The worker performed the services part-time as needed at the firm's place of business. The firm required the worker to perform the services personally or provide a substitute if absent for more than a week.

The firm provided everything the worker needed in order to perform the services. The worker provided personal tools. The worker incurred material expenses in performing repair services and the firm reimbursed the cost of the materials used. The firm paid the worker a salary + provided rental for manager services and hourly for repair/maintenance services. The firm was paid directly and indirectly by the customers through the worker. The firm did not carry workers' compensation insurance. The worker could not suffer any economic loss and had no financial risk with regard to performance of the services. The firm determined the level of payment for the rentals and services.

There was a signed contract which addressed job requirements and expectations. The firm stated the worker received bonus benefits and performed services for others. The worker stated no similar services were performed for others. The firm stated the worker advertised through word of mouth and the agreement indicated worker required to market firm's business. The worker stated he marketed vacancies through signs in trailers. The firm referred to the worker as an on-site manager of the firm's business to the customers. Both the firm and worker retained the right to terminate the working relationship at any time without incurring any liability. The firm terminated the worker immediately with a letter and ordered worker to vacate the residency in a month in the same condition it was in when he moved into it.

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## Analysis

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When a firm determines or retains the right to determine directly or through designation what, how, when, and where workers perform services an employer/employee relationship exists. For federal employment tax purposes, it is not necessary for firms to exert direct or continuous control nor that services be performed full-time on a fixed scheduled basis, it is sufficient that the firm retains the right to change the workers services, as they deem necessary for business purposes. This control may come from verbal instructions, training, meetings, reporting, as well as supervision. Also, the methods used by workers to perform services are not only controlled through verbal instructions but also by equipment, materials, and supplies provided. In this case, the firm not the worker had control over the methods and means used in the performance of the services. These facts evidence behavioral control by the firm over the services performed by the worker.

When a worker does not have a significant financial investment in a business requiring capital outlays with business risk an employer/employee relationship is evident. In this case, the worker had no financial investment in a business and did not incur any significant on-going business expenses. The firm had the business investment and control over profit and risk of loss with regard to the services the worker performed for the firm's business. The firm paid the worker a monthly salary for management services and provided the worker with a trailer to live in and paid the worker hourly for repair and maintenance services. The customers paid the firm directly and indirectly through the worker. The firm reimbursed the worker for all material expenses purchased for repair and maintenance services. The firm determined the level of payment for the rents and services the worker performed. The worker could not suffer any economic loss and had no financial risk with regard to performance of the services. These facts evidence financial control by the firm over the services performed by the worker.

There was a signed agreement with regard to management of the firm's properties and performance of listed services by the worker at the firm's park. The agreement indicated the worker was a 1099 employee. It is noted that whether there is an employment relationship is a question of fact based on the autonomy of the work relationship and is not subject to negotiation between the parties. The worker did perform similar services for others per the firm and was not required to obtain the firm's prior approval to do so. Although this could be an important factor to consider in an independent contractor relationship, this factor alone would not make the worker to be an independent contractor. Many workers have more than one job at a time and may be an employee in one or all working relationships depending on the autonomy of each one. The worker did not advertise as a business to the public but advertised vacancies at the park through the use of sign-age. The worker could not suffer any economic loss and had no financial risk with regard to the services performed for the firm's business operation. The worker personally performed services for the firm's business under the firm's business name on a regular and continuous as needed basis.

Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability. The right to discharge a worker at any time without incurring a liability for termination is a factor indicating that the worker is an employee and the person possessing the right is an employer. An employer exercises control through the threat of dismissal, which causes the worker to obey the employer's instructions. An independent contractor, on the other hand, cannot be fired without a liability so long as the independent contractor produces a result that meets the contract specifications. Likewise, if the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship.