

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 a property management company. The worker was engaged to perform services as a resident manager, to perform such duties as leasing apartments, cleaning, answering phones, and maintenance work. The worker submitted an employment application to the firm regarding this position. The firm indicated that the worker performed his services in the capacity of an independent contractor, in accordance with a written contract. As a result, the firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker received training and instructions from the firm on how to perform the services. The firm provided work assignments. Work methods were determined by both the worker and the firm. Problems and complaints were reported to the firm for resolution purposes. The worker was required to perform his services personally, at the firm's office, and property locations.

The firm provided the office space, office equipment and office supplies, and cell phone needed to perform the services. The worker provided cleaning supplies. Work related expenses incurred by the worker were reimbursed by the firm. The worker's monthly remuneration was hourly wage based, plus commissions. Tenants paid the firm for services rendered. The worker did not incur economic loss or financial risks related to the services he performed for the firm,

The firm did not cover the worker under workers' compensation insurance. Bonuses were made available to the worker. The worker did not perform similar services for others, nor did he personally advertise as being available to perform similar services for the public. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The 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.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, training, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker used the firm's facilities, equipment, tools and supplies, and represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that the worker's services were performed as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov