

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN Park 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 homeowners' association (HOA) of an RV Park, providing billing and collection services of HOA dues, and maintenance services of the park. The worker was engaged to perform services as a property manager, whose services included accounting services, (all billing for HOA dues, collections), banking, monthly reports, supply ordering, and taking care of RVs coming and going out of the park. The firm and worker entered into an independent contractor agreement regarding the services to be performed. As a result the firm considered the worker as an independent contractor, and issued to her a Form 1099-MISC at year-end to report the monies received for her services as non-employee compensation.

The worker's work assignments were received through past experience with accounting, and from the firm. Work methods were determined by the worker and the firm. Work related problems were reported to the firm for resolution purposes. The worker performed her services personally at the firm's location. She was required to provide the firm with reports regarding profit and loss statements.

The firm provided the worker with the computer, paper, Internet access, office space, and supplies needed to perform the services. The worker provided nothing, and did not incur work related expenses. The firm paid the worker a set price per month as payment for her services. No information was provided by either party to support that the worker performed similar services for others, or that she advertised her services to others while engaged by the firm. The work relationship could have been terminated by either party at any time without incurring liabilities.

Analysis

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.

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, work methods, schedule, and routine in the performance of her services. The worker's services were performed personally, at the firm's location. The worker used the firm's facilities, equipment, tools and supplies, and she represented the firm's business operations in the performance of her 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 her 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 she performed her services 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