

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

Occupation

04MAN Vice President

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 worker stated he received training on where to show up, what time he should be there and given materials he would need. The firm stated no training was provided. The worker stated he received assignments through the company email, phone calls and texts. However, the firm stated the worker was informed of projects that were available to work and that the worker chose which projects he wanted to accept. The worker stated that the firm determined the methods in which these assignments were to be performed, the firm disagreed, and stated the worker determined these methods. The worker stated that he was to contact the owners for any complaints or if a problem were to arise, consequently the firm stated that the worker handled these situations himself. The worker responded that daily reports were required and submitted to the firm by email or text. The firm stated updates on progress was requested by the customer, neither party submitted an example of these reports. The worker provided that his daily routine was determined by the owner, the firm responded that the worker determined most of his own hours unless the customers requested an alternative schedule such as night work or day work. These services were performed at the customer's premises and the nature of this relationship contemplated that the worker would perform the services personally. The worker stated weekly meetings with customers were held, in addition to any meetings that were requested by the owner of the firm, the firm stated no weekly meetings were required. If additional help was needed the payer was responsible to hire and compensate the additional help. The parties agree the worker did not furnish any of the supplies materials or equipment used in performing the services, except for some small hand tools. The worker did not lease equipment, space or a facility from the firm. The worker did not incur significant business expenses but was reimbursed by the firm in the amount of 127.56 for materials, additionally the worker responded that he was also reimbursed for hotels. The parties agreed that the worker received an hourly wage for his services and that the worker was not allowed a drawing account for advances. Additionally, the parties concurred that the firm's customers paid the firm and the firm was responsible for establishing the level of payment for the services provided. The parties gave conflicting responses regarding workmen's compensation, the worker stated the firm did not carry workmen's compensation on him, however the firm stated it did. Both parties agreed there would be no financial risk or economic loss incurred by the worker. The worker did not receive sick pay, vacation pay, or health insurance, however, the worker did receive a Christmas bonus of 1 week's pay. Either party may terminate the worker's services at any time without incurring a penalty or liability. The worker was not performing similar services for others during the same time period. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. The worker provided a business card to support the fact that he performed services under the firm's name and was represented as Vice President of Operations, the worker also wore a company T-shirt. The firm stated the worker was represented as an employee performing work under the firm's name. The worker stated if any assembly or process is done at home, it was the firm who supplied the materials, the firm stated no assembly or processing was done at home. The parties differ on how the work relationship ended, the worker stated the owner picked up the company phone, truck, gas card & T-shirts, due to the worker questioning his employment status. The firm responded that the worker no longer wanted to accept jobs and their work stopped due to COVID.

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**Analysis**

Often because of the nature of the occupation it is not necessary that the worker receive extensive training, instructions or close supervision, the control factor is present if the person or persons for whom the services are performed retain the right to do so. Although the worker may not have been supervised directly while performing his services, this is not enough to characterize his relationship as a contract worker. The worker performed personal services on a continuous basis. The firm provided all significant materials to the worker. Thus, he did not have a have significant financial investment in the firm's materials. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry enough weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. This is a strong indicator that the worker is not an independent contractor. Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes. The firm did have the right to direct and control the worker. The worker shall be found to be an independent contractor for Federal tax purposes.