

SS-8 Determination—Determination for Public Inspection

Occupation 04MAN.4 Manager	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> Yes

Facts of Case

The firm is an s-corporation in the business of the installation and maintenance of landscape and garden design, and offers a personalized line of plant food which engaged the worker as a project manager from March 2011 to May 2012. There was no written agreement between the parties.

The firm stated no training was given to the worker. The worker stated all day to day activities were given by the firm. The firm stated the worker received his assignment through a verbal agreement. The worker stated he received his assignments from the firm's management. The worker stated his routine varied depending on what task needed to be completed as given by the firm's management. The worker stated the firm's management also determined the methods by which the assignments were performed. The firm stated the worker was left to handle a job. Both parties agree the firm was responsible for all complaints and problem resolution. The firm stated the worker was required to submit pictures of completed work. Both parties agree that the worker performed the services on the premises of the firm's customers. The worker also stated he performed the services on the firm's premises. The relationship between the parties was continuous, as opposed to a one-time transaction. Both parties agree that the worker was required to perform the services personally. His services were an integral and necessary part of the services the firm provided to its customers. The firm hired and paid any substitutes or helpers.

Both parties agree the firm furnished the worker with all supplies, equipment, materials, rentals and property, at no expense to him. The worker did not lease equipment. The firm stated the worker was responsible for his own telephone, internet, health insurance and vehicle. The firm determined the fees to be charged to its clients. The worker stated any expenses incurred while providing services for the firm was reimbursed to the worker by the firm. The firm stated the worker had an obligation to replace broken tools or damaged equipment. The worker was paid an hourly monthly wage. The firm's customers paid the firm. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

The worker stated he received bonuses. The firm stated the worker had no benefits or bonuses. Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the firm. The worker did not advertise his services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. He was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties ended when the firm terminated the worker.

Analysis

The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's customer's premises, on a regular schedule set by the firm. The firm provided all significant materials and a workspace to the worker. 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 sufficient 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.