

SS-8 Determination—Determination for Public Inspection

Occupation

04MAN.134 Manager

Determination:

☒ Employee

☐ Contractor

UILC

Third Party Communication:

☒ None

☐ Yes

Facts of Case

This case involves the firm's request for a reconsideration of the initial findings of worker classification for federal employment tax purposes, concerning management services performed by [REDACTED].

The firm's information states that the worker performed services for the firm in 2013, and those services were done as a volunteer as in the case of the firm's 100s of volunteers – no compensation. The worker did not receive specific verbal or written instructions from the Board. The Board adopts policies and goals, and lets the worker decide on how to reach those objectives. The worker, as part of hourly compensation, was expected to attend monthly Board meetings to give updates, but was excused from these meetings if not convenient. The worker was not exclusive to this organization; she had other employees and did outside consulting work for others, including landscapers and other employers in the field of expertise. The worker is an integral part of the firm, but the firm has employed other vendors to provide expertise besides just this worker. The worker did assume business risks, including purchase/maintenance of personal vehicle and cell phone. She was responsible for her own ongoing continuing education. The worker was represented in the firm's advertising as a part-time garden manager, not employee. The firm further states that the worker does maintain a separate business office in her home and regularly seeks/obtains other business. Work produced for other individuals/businesses become property of that business/individual.

The firm further states that it has continually paid for an independent contractor(s) to oversee the mission of the organization since 2011. The firm does not control the flow of work, the hours of employment, or the tools of the trade. Tools, both garden tools and technology, are available to the firm's volunteers and Board members for use, and not for the exclusive use of the worker. The worker does provide her own personal tools, both gardening tools and technology. The worker has control over what she wants to plant and teach. The worker has freedom, within loosely Board controlled objectives, to decide how/what to do.

Analysis

After a review of the information originally submitted in this case and of the subsequent information submitted for reconsideration, we find no facts or legal arguments presented that would cause us to change or alter the conclusion reached in our original ruling.

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 and policies in the performance of her services. The worker's services were performed personally, at the firm's location. Work related problems were reported to the firm for resolution purposes. The worker used the firm's facilities, equipment, tools and supplies, and 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 his/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.

We have thoroughly considered your request for reconsideration; however, we believe that you retained the right to direct and control the services performed by the worker. Therefore, the determination that the worker was an employee of the firm, for federal employment tax purposes, is affirmed.

The issuance of this reconsideration is the final step in the SS-8 determination process. There are no provisions in the Internal Revenue Code that grant you the right to a hearing, to an appeal, or to a suit in United States Tax Court.

Internal Revenue Code section 7436 concerns reclassifications of worker status that occur during IRS examinations. As this reconsideration is not related to an IRS audit, it does not constitute a notice of determination under the provisions of section 7436.