Form **14430-A** (July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Business/Computer Services/Office/Sales	☒ 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 is seeking a determination of worker classification for services performed for the firm as a finance and operations manager from July 2024 until November 2024. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm.

The worker states that they were an employee of the firm because the firm classified them as an employee from October 2023 until July 2024. When the worker left, the firm requested that they come back and assist until the firm could hire a new CEO. The firm transitioned the worker to a 1099-NEC independent contractor at that time with no change in the worker's job duties. There were no written agreements between the parties.

The firm states that they are a custodian of endowed and non-endowed funds for parishes, schools, and ministries. They also administer donor-advised funds. The worker performed services for the firm as an operations manager, assisting with the administrative and accounting work of running the firm. The firm classified the worker as an independent contractor adherent to a verbal agreement between the parties after they resigned from their employee position in July 2024. The verbal agreement was that the worker would perform their job duties as needed and as desired at a mutually agreed upon hourly rate.

The firm states that their executive director and accounting consultant provided instruction to the worker. The executive director provided job assignments to the worker in person and over email. The accounting consultant and worker determined the methods by which job duties were performed. If the worker encountered any problems or complaints while working, they were required to contact either the executive director or accounting consultant. The executive director was responsible for problem resolution. There were no reports required of the worker. Services were performed as needed at the firm's premises 50% of the time and from the worker's home 50% of the time. There were no meetings required of the worker. The worker states that the firm taught them how to use the firm's grant and donation software and taught them the specific processes for processing grants and accepting donations. The board of directors gave the worker job assignments in person, over the phone, through email, and through text messages, and would contact the worker if additional tasks were needed in addition to their regular job duties. The board of directors would be contacted if the worker could not resolve problems. Services were performed as scheduled 90% of the time at the firm's premises and 10% of the time at the worker's home. The firm required the worker to attend board meetings and to perform services personally. The worker did not have any authority to hire helpers or substitutes.

The firm states that they provided the worker with a computer, office, software, and office supplies. The worker did not provide anything and did not lease any space, facilities, or equipment. The worker would occasionally need to make office-related purchases. The firm reimbursed the worker for expenses every two weeks when hours were reviewed. The firm paid the worker an hourly rate of pay and did not carry worker's compensation insurance on the worker. The worker did not have exposure to financial risk or loss while working for the firm. The worker set the rate of pay for services performed. The worker states that the firm provided an office, computer, software, phones, printer, scanner, and basic office supplies. The worker did not provide anything or have any unreimbursed expenses. The firm did not give the worker access to advance pay or carry worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm and worker mutually agreed on the rate of pay for services performed.

The firm states that they did not provide benefits to the worker. The relationship between the parties could be terminated by either party without liability or penalty. There were no non-compete agreements in place between the parties. The worker did not assemble or process products at home. The firm represented the worker to customers as a representative performing services under the firm's name. The firm ended the work relationship. The worker states that they did not perform similar services for other firms or advertise their services to the public. The firm provided the worker with an email account that advertised the worker in the signature as the firm's "Finance and Operations manager" performing services under the firm's name.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation. The firm provided training and instruction to the worker on their job duties and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, day, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. In this case, the worker did not invest capital or assume business risks. 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. Additionally, the worker had no exposure to financial risk or loss in the performance of their job duties. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

Factors that illustrate how the parties perceive their relationship include the intent of the parties as expressed in written contracts; the provision of, or lack of employee benefits; the right of the parties to terminate the relationship; the permanency of the relationship; and whether the services performed are part of the service recipient's regular business activities. In this case, the worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the firm's business. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

Based on the above analysis, we conclude that the firm had the right to exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, and not an independent contractor operating a trade or business.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.