

SS-8 Determination—Determination for Public Inspection

Occupation

05CSI Personal Service Providers

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

Information provided for this case finds that the payer was an elderly individual in hospice (hereafter referred to as the payer). The worker was engaged to perform services as a caregiver for the payer, with services being performed in the payer's home. The payer's information contends that the worker performed services as a companion sitter. As a result, the worker status was treated as independent contractor, with Forms 1099-MISC issued to the worker at year-end, to report the monies received for her services as non-employee compensation.

The worker did not receive specific training or instructions on how to perform her services. The worker was expected to perform her services in accordance with her prior training and experience. The worker was given a set work schedule, and assignments regarding the proper care and routine for the payer. The worker performed her services personally, and problems were reported to the supervising caregiver (and family members) for resolution purposes.

All equipment and supplies were provided for the worker's use. The worker incurred transportation expenses for getting to and from the payer's residence. The payer paid the worker on an hourly wage basis for her services. The worker did not incur economic loss or financial risks related to the services she performed for the payer.

Workers' compensation was not carried on the worker. Employment benefits were not made available to the worker. The worker did not perform similar services for others, and did not advertise as being available to perform similar services for others. The work relationship was continuous, as opposed to a one-time transaction.

Analysis

IRC 3506 regarding companion sitters provides that a companion sitter will not be an employee of a companion sitting placement service if the companion sitting placement service neither pays nor receives the salary or wages of the sitter. Case information finds no information to support that the worker was paid by a companion sitting service for the services she performed for the payer; pay documents were issued from the payer to the worker.

In general, domestic services include services of a household nature in or about a private home performed by cooks, waiters, butlers, housekeepers, maids, valets, babysitters, janitors, laundresses, caretakers, handymen, gardeners, grooms, chauffeurs of family-use vehicles, and companions for convalescents, the elderly, or the disabled. A private home is a fixed place of abode of an individual or family.

Nurses' aides and other unlicensed individuals normally perform services that are expected of maids and servants. Such services include bathing the individual, combing his/her hair, reading to the individual, arranging bedding and clothing, and preparing meals. These services are also considered domestic services.

Remuneration paid for domestic services is not subject to federal income tax withholding, unless both the employer and employee voluntarily agree to it. See Code section 3401(a)(3). The domestic employee may make a request for income tax withholding by completing Form W-4, "Employee's Withholding Allowance Certificate," and may also request advance payments of the earned income credit by completing Form W-5 if he/she is eligible. However, there are no similar exceptions for FICA and FUTA taxes.

Because the worker's services constitute domestic services, the employer is responsible for withholding the employee's share of the FICA tax if the worker was paid up to a specific income threshold amount in each particular year. The wage threshold for withholding FICA tax in a specific year may be found in that year's Publication 926, Household Employer's Tax Guide.