

SS-8 Determination—Determination for Public Inspection

Occupation

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

The firm indicated the worker was an employee of another agency, whom she had contacted for support following her husband's stroke, to provide Certified Nursing care for her (she has Multiple Sclerosis). That arrangement lasted a few months at which time the worker went to work for the firm (individual) directly as an independent Contractor. There was never any agreement to withhold any money from her pay and that she would be responsible for any and all tax obligations.

The worker indicated she felt she should have received Form W-2 as an employee. She agreed she provided personal care giving services for the firm, in her home. She performed services on twelve hour shifts, seven days a week. All work had been performed on the firm premises. The worker stated she was paid by the hour. The worker agreed she moved out of state.

Analysis

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 or nannies, 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.

Conclusion:

Based on the above analysis, we conclude the worker was a domestic employee. 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.