

SS-8 Determination—Determination for Public Inspection

Occupation 05CSI.25 Companion Sitter	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 is an elder individual who requires personal and house maintenance assistant services. The firm engages the worker his son to perform personal and house maintenance services. The worker has been performing services voluntarily in prior years for both parents and was not paid for the services. In 2014 the firm, his father, began paying the worker to perform the services and issued a Form 1099-MISC at year-end. The firm discussed his needs with the worker and the worker saw other things needed to be done and performed the services at the firm's home. The firm and worker determine the methods to use in order to perform the services. The worker sometimes contacts the firm regarding problems or complaints or resolves them on his own. The worker provides the firm with verbal reports if needed. The worker performs the services from Friday until Sunday at the firm's home and other local designated destinations as need and requested by the firm. The worker performs the services personally. The firm and worker hire substitutes or helpers and the firm pays them.

The firm provides everything in the home that the worker needs to perform the services. The worker provides gas and a personal vehicle. The firm does not reimburse the worker for any expenses. The firm pays the worker on a piecework basis through personal resources. The firm does not carry workers' compensation insurance. The firm determines the level of payment for the services. The worker can not suffer any economic loss and has no financial risk.

There are no contracts between the firm and the worker. The firm provides no employee benefits. The worker does not perform similar services for others. The worker does no advertising as a business to the public. The firm refers to the worker as his son by name to others. Both the firm and the worker may terminate the working relationship at any time without incurring any liability.

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, baby sitters, 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.

If you paid cash wages of \$1000 or more for domestic services during any calendar quarter in the calendar year or the preceding calendar year, then those wages are subject to FUTA tax (Code sections 3306(a)(3) and 3306(c)(2)). Generally, you can take a credit against the FUTA tax for a contribution paid into state unemployment funds, although this credit cannot exceed 5.4 percent of the first \$7000 of wages.

The FUTA requirements are based on the total wages paid to all domestic employees, while the FICA wage threshold is based on the wages paid to each domestic employee. Therefore, an employer may be liable for FUTA tax, while not liable for FICA tax.

Domestic employers are required to satisfy their tax obligations by increasing their quarterly estimated tax payments or by increasing tax withholding from their own wages. This requirement became effective in 1998. Estimated tax penalties apply to underpayments attributable to these taxes.

Therefore, we conclude that as the employer of the worker, you are liable for FICA and FUTA taxes for the worker, subject to the preceding thresholds. If you choose to pay your employee's share of social security and Medicare taxes in lieu of withholding it from the employee's wages, the amount must be added to the employee's wages for income tax purposes. However, it is not included as social security, Medicare, or FUTA wages.

For further clarification of household employee issues, please see Publication 926, Household Employer's Tax Guide.