

SS-8 Determination—Determination for Public Inspection

Occupation

05CSI.42 Companion Sitter

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 indicates the "firm" was an elderly individual who required assistance/companionship in order to remain living in her home. The worker had been retained by the firm as an assistant/companion for tax years 2014 and 2015. The firm reported the income on Form 1099-MISC. The firm provided a copy of the letter offering her a full time position, with a full compensation package. She was to work nine am to three pm or ten am to four pm, Monday through Saturday. She would receive five days' vacation time (with two weeks' notice), paid holidays (six), and reimbursement for out of pocket expenses. She also had use of the client's vehicle to run errands and drive her to appointments. Insurance was covered at the client's expense. No other information was provided on the firm's SS-8 response. The firm felt the worker met the IRS definition of a companion sitter, under IRC 3506.

The worker indicated she provided light housekeeping services, driving Mrs. Fox to appointments, making meals, walking the dog etc. The worker was in contact with Peter Fox, son of Mrs. Fox, if any issues came up. The worker indicated she was paid by the hour. She agreed she was given paid vacations, and paid holidays. The worker indicated while transporting the client to an appointment, she became very agitated, and instructed her to pull over. The family decided she was not to return.

The question of whether an individual is an independent contractor or an employee is one that is determined through consideration of the facts of a particular case along with the application of law and regulations for worker classification issues, known as "common law." Common law flows chiefly from court decisions and is a major part of the justice system of the United States. Under the common law, the treatment of a worker as an independent contractor or an employee originates from the legal definitions developed in the law and it depends on the payer's right to direct and control the worker in the performance of his or her duties. Section 3121(d)(2) of the Code provides that the term "employee" means any individual defined as an employee by using the usual common law rules.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

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.

Analysis

We have applied the above law to the information submitted. As is the case in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, you retained the right to change the worker's methods and to direct the worker to the extent necessary to protect your financial investment.

Factors that illustrate whether there is a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. In this case, the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

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 your business. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

CONCLUSION

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 offered the worker full time employment, being paid by the hour, with a full compensation package. The worker performed domestic services in the home, under the direction of either [REDACTED] and/or her sons. Therefore, your statement that the worker was an independent contractor, because she meets the criteria of a companion sitter is without merit. IRC 3506 pertains to whether a person is an employee of a companion sitting placement service. The worker was referred by [REDACTED] physician, not a placement service (#1) and (2) it states the "companion sitter" is deemed to be self employed..unless considered to be a statutory or common law employee of the person or business for which the services are performed. Since we have found the worker to have in fact been a domestic employee, IRC 3506 does not apply.

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