

**SS-8 Determination—Determination for Public Inspection**

Occupation 05ITE Music Teacher	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 a retail music store with private music studios offering music lessons to students with the instructor of their choice. As the owner of the firm, you engaged the worker as a voice instructor. You reported the worker's remuneration on Forms 1099-MISC for 2016 and 2017.

Information from the parties supports that you relied upon the worker's prior training and experience to perform his services. The worker's work assignments were based upon your students' requests and schedules. If problems or complaints occurred, the worker notified you; you and the worker were responsible for their resolutions. Students generally requested lessons from 2 p.m. - 7 p.m., and were generally 30 minutes in length. The worker was expected to check the shared on-line calendar and arrive accordingly. The worker's hours varied. If there were breaks in the schedule, the worker did not receive compensation, but could use his time at his leisure. The worker performed his services on your firm's premises. He was required to perform his services personally.

You provided the piano, guitar, amplifier, copier, paper, pencils, pens, metronome, and tuner. The worker provided any instructional materials and resources pertinent to his classes. He incurred commuting and parking expenses. The worker did not lease equipment, space, or a facility. You paid the worker at an hourly rate. There were no guaranteed hours of teaching and no paid breaks. You did not cover the worker under workers' compensation. Customers paid your firm directly at prices that you established. Neither party indicated an investment by the worker in your firm or a related business, or the risk of the worker incurring a financial loss beyond the normal loss of compensation.

You did not make benefits available to the worker. The worker provided similar services for others during the same time period. The worker was listed, with a brief biography, on your firm's website. He performed his services under your firm's name. Both parties reserved the right to terminate the work relationship at any time without incurring a penalty or liability, and in fact, the worker terminated the work relationship without notice.

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**Analysis**

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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, coadventurer, agent, or independent contractor must be disregarded. Therefore, your statement that the worker was an independent contractor pursuant to an 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. If a firm has to make a worker “understand” or even if a worker “agreed to” being an independent contractor (as in a verbal or written agreement), this factor does not determine the worker’s status as an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, although you relied upon the worker's prior training and experience to perform his services, you were ultimately responsible for resolving any problems or complaints that may have occurred, showing you retained the right to change the worker’s methods and to direct the worker to the extent necessary to protect your financial investment. The worker's schedule was dependent upon the students enrolled by your firm. He performed his services on your firm's premises. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. The worker was required to perform his services personally. 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. These facts show that you retained behavioral control over the services of the worker.

Factors that illustrate whether there was 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. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. The worker provided instructional materials and resources pertinent to his classes. 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. You paid the worker at an hourly rate. Payment by the hour generally points to an employer-employee relationship. These facts show that you retained control over the financial aspects of the worker’s services.

Factors that illustrate how the parties perceived 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 were part of the service recipient’s regular business activities. In this case, the worker performed his services on a continuing basis. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The worker was not engaged in an independent enterprise, but rather the services performed by the worker as a music instructor were a necessary and integral part of your firm's business of providing music lessons. Integration of the worker’s services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. The worker performed similar services for others during the same time period; however, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. Although you did not make benefits available to the worker, the worker terminated the work relationship without incurring liability or penalty. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. These facts show that you retained control over the work relationship and services of the worker.

Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm’s organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees.

Based on the above analysis, we conclude that you 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.