

SS-8 Determination—Determination for Public InspectionOccupation
05ITE TeacherDetermination:
☒ 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 is a teaching facility offering French language classes to its students, via group and individual instruction. The firm engaged the worker to perform services as a French teacher, whose duties included teaching French to groups, private lessons, examiner for French language diplomas, creation and maintenance of the firm's teaching blog. The firm treated the worker class as independent contractor.

The worker received training and instructions from the firm on how to perform his services (training as an examiner, peer reviews, periodic observations from the firm and colleagues with feedback sessions) to harmonize the teaching with the firm's standards. The worker received work assignments from the firm. He contacted the firm's office manager to request private lessons based on the worker's availability. The school directors offered the worker classes that he could refuse, or the worker asked and suggested desired classes. The teaching schedule was prepared by the firm. The worker received his timetable, the curriculum and teaching materials (books, CDs) at the beginning of the teaching sessions. The firm determined the work methods, and the worker was required to follow the firm's curriculum. The worker reported work related problems to the firm for resolution purposes. The firm required the worker to perform his services personally, at the firm's location, and at student locations.

The firm provided the worker with the facilities and teaching materials (television, computer, white board, some books, and markers), needed to perform the services. The worker also provided teaching materials (videos, worksheets, books). The worker incurred expenses for the items he provided, (teaching materials, writing utensils, paper, ink, Internet, phone to prepare lessons), and commuting expenses. The firm paid the worker on an hourly wage basis and piecework basis for his services. Students paid the firm for services rendered. The worker did not incur economic loss or financial risks related to the services he performed for the firm.

The firm covered the worker under workers' compensation insurance. Employment benefits were not make available to the worker. There was no information provided in this case to support that the worker performed similar for others, or that he advertised his services to the public while engaged by the firm. The work relationship was continuous, and could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker performed his services following the firm's instructions, training, work methods, schedule, and routine. His services were performed personally at locations approved by the firm. The worker represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov