

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

Occupation

05ITE Instructors/Teachers

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 indicated the firm is a preschool. The worker had been retained by the firm as a music teacher for tax years 2013 through 2015. The firm reported the income on Form 1099-MISC. The firm provided copies of invoices submitted by the worker and the W-9 completed. Both parties provided a copy of the job description. The firm stated traditionally this person has multiple clients at different locations. This position was approximately four hours per week. The firm stated it provided age appropriate materials to be shared with the children. (The worker did provide a copy of the list of songs given by the school). She reported to the program director if there were any issues. The firm indicated she chose her daily schedule to interact with six classes, with teacher supervision. The work was performed on firm premises. She was to perform those services personally. The firm provided musical instruments, as did the teacher. The firm indicated she was paid per invoice. Either party could terminate the work relationship without incurring a penalty or liability. The worker did perform similar services for others. Their permission to do so was not required. The firm terminated the work relationship.

The worker filed the request for services as she felt she was an employee because she was given specific guidelines as far as work time, work procedures and the firm provided the music equipment to perform the job. she provided her own guitar. She was given instructions from the owner and other staff members as far as songs to learn, themes, setup for performances etc. Work assignments were given verbally and via e-mail. She agreed she worked two days a week from nine to eleven-fifty-five. Services were performed on firm premises. She was required to perform her services personally. The worker indicated she was paid by the hour. Either party could terminate the work relationship without incurring a penalty or liability.

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## Analysis

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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 work was performed under supervision of the school at all times. The firm provided the songs to be taught, what they wanted incorporated into the programs, provided the instruments, and song list to be utilized. the worker was paid by the hour for the work performed. The fact she may have taught at other schools, does not mean she was not an employee of each one. She was required to work with the schools calendar, and be available for scheduled programs, indicating the firm had priority over her time.

For the year(s) in question, it is possible that the statute of limitations has expired for the assessment of taxes in this matter. If so, it will not be necessary for you to amend your return(s). Internal Revenue Code (IRC) section 6501(a) provides that the statute of limitations for assessment generally expires three years from the due date of the return, or three years after the date the return was actually filed, whichever is later. IRC section 6501(b)(2) provides that for certain employment tax returns, the three years would begin April 15 of the following year for which the return was due. IRC section 6511(a) provides that a claim for credit or refund of an overpayment shall be filed within three years from the date the return was filed, or two years from the date the tax was paid, whichever expires later.