

SS-8 Determination—Determination for Public Inspection

Occupation

05MPR Personal Service Providers

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 this a non-profit church organization. The worker performed services as an Ordained Minister for tax years 2006 through 2010. The firm indicated no training was given, he was an Ordained Minister. There were no work assignments, he did not have specific times he was required to minister or reach out to the congregation. The firm stated the only daily routine was during hours of Worship on Sunday Mornings and Wednesday evenings, and offered his services during those times. He was not required to keep any type of hours and not required to attend services. Services were performed at a variety of places, church, home, members home or at the hospital. There were no mandatory meetings. The firm indicated it provided all supplies. The firm indicated the worker was not paid, he only received the love offerings given on Sunday. The firm indicated the customer paid the firm. Either party could terminate the work relationship without incurring a penalty or liability. The firm indicated he was represented as the Minister. The worker moved to another church.

The worker indicated his title was Associate Minister. He carried out operational duties as assigned by the minister or his secretary. He was required to arrive one hour before anyone to turn on the AC/Heat, lock/unlock the church, answered the phones, visited the sick and did upkeep of the grounds. The firm provided him with an office and cell phone as he was on call. He worker Sundays eight to two from 2006-2008 and seven to twelve from 2008-2010., Wednesday until six pm. Tuesdays four to five pm. then ten to eleven am. He was on call around the clock. He was required to attend weekly and monthly staff meetings. He was required to perform his services personally. The firm provided cell phone service, miscellaneous supplies, meals, vacation pay, mileage reimbursement. The worker indicated he was paid on salary. The customer paid the firm. He indicated he was given paid holidays, bonuses, personal days meals. Either party could terminate the work relationship without incurring a penalty or liability. The worker indicated he had signed a non compete agreement. He was represented as staff/associate minister for the church. He indicated he resigned.

ANALYSIS

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.

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.

-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 establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

-A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. So

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. Services were performed on a continuing basis as an Associate Minister for the church. He was required to attend Sunday and Wednesday services, as well as to be on call for it's congregation.

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.

Many religious, charitable, educational, or other nonprofit organizations are exempt from federal income tax. However, they must withhold federal income tax from their employees' pay and report each employee's compensation on Form W-2. If an employee is paid \$100 or more during a calendar year, his/her wages are also subject to FICA taxes (social security and Medicare).

Churches or church-controlled organizations that are opposed to the payment of social security and Medicare taxes and that have filed Form 8274 for exemption do not pay social security and Medicare taxes. Their employees, however, are subject to self-employment tax.

Services performed by a minister in the exercise of his or her ministry are exempt from social security and Medicare taxes. Such services are, however, subject to the taxes imposed under the Self-Employment Contributions Act (SECA).

Services performed by a minister in the exercise of his or her ministry are also exempt from mandatory federal income tax withholding even though these earnings should be reported on Form W-2. Income tax may be withheld under a voluntary agreement between the church and the minister.

For more detailed information, you may obtain Publication 517, Social Security and Other Information for Members of the Clergy and Religious Workers by calling 1-800-TAX-FORM.