

SS-8 Determination—Determination for Public Inspection

Occupation 05MPR Ministers/Priests	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

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm/payer concerning this work relationship. [REDACTED], Treasurer for the firm responded to our request for completion of Form SS-8.

Information provided indicated the firm is a religious organization. The worker performed services as an [REDACTED] Pastor in tax year 2017. The firm reported the income earned on a 2018 Form 1099-MISC at year end. (Should have been reported on a 2017 1099-MISC form as the income was earned in 2017). The services were performed under an employment agreement, a copy was provided for our files. That agreement indicated a monthly salary, mileage and two weeks vacation. It covered the time frame of January to June 2017. No training was required. Work assignments came from the firm's relationship committee. He was required to perform Sunday morning worship services, and Monday through Friday perform membership visitations, Bible study groups etc. Services were performed at the church, members homes, hospital visits etc. He attended monthly church committee meetings. He was required to perform his services personally. Either could terminate the work relationship without incurring a penalty or liability. The firm indicated the contract ended.

The worker indicated work assignments were specified in the book of [REDACTED] church and the policies of the [REDACTED]. The [REDACTED] relations committee determined how the work was performed. He provided sermons, bible study lessons, attended various meetings, visited nursing homes, hospitals, counseling sessions etc. He agreed he was to provide his services personally. The firm provided supplies, equipment, materials and property. He provided prepared hand-outs for Bible Study attendees and Bibles to children attending [REDACTED] Services. He agreed he was paid on salary. The members paid the church. He agreed he was given paid vacations. either party could terminate the work relationship without incurring a penalty or liability. He agreed the term of contract ended.

Analysis

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.

Congress has enacted special tax laws applicable to churches, religious organizations and ministers.

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.

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.

Payments for services performed by an employee of a nonprofit organization described in section 501(c)(3) are not subject to FUTA taxes.

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.