

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

The firm is a church. The worker was engaged by the church as a Worship Minister who also performed administrative duties. The firm reported the worker's remuneration on Forms 1099-MISC for 2014 through 2017. There is no indication that the church withheld taxes for the 2018 tax year.

Information from the parties supports that the firm relied upon the worker's prior training and experience to perform his services. The worker's duties were based upon the church's expectations and needs. The church conducted an informal annual feedback review of the worker's work, and discussed the worker's desire to continue providing services for another year. If problems or complaints occurred, the worker contacted the the Board of Directors or Pastor for resolution. The worker was required to perform his services personally.

The firm provided the property and supplies. The worker utilized his personal musical instrument and other work related items. The church paid the worker a set amount on a bi-monthly basis. The church stated that it covered the worker under workers' compensation as part of its staff and volunteers. The worker's only risk of financial loss involved his equipment.

The church did not make general designated benefits available to the worker. It did not prohibit the worker from providing similar services for others. Both parties reserved the right to terminate the work relationship without incurring a penalty or liability, and in fact, the worker terminated the work relationship.

Analysis

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, co-adventurer, agent, or independent contractor must be disregarded. Therefore, the church's 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.

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the church relied upon the worker's prior training and experience to perform his services. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship. The church provided an annual review of the worker and was responsible for resolving any problems or complaints that may have occurred, showing the church retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment. 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 the church 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. There is no evidence to suggest the worker's musical instrument and accessories were purchased exclusively for business purposes. Presumably these items were also used by the worker for his personal needs. Therefore, they are not considered a significant business investment. The church paid the worker at a set rate on a bi-monthly basis, and the risk of loss was absent. These facts show that the church 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. The worker was not engaged in an independent enterprise, but rather the services performed by the worker were a necessary and integral part of the church's mission. 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 could have 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 the firm 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 the church retained control over the work relationship and services of the worker.

Based on the above analysis, we conclude that the church 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. 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. 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 taxes and Medicare taxes. Such services are, however, subject to 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 or visiting us at www.irs.gov.