Form **14430-A** (July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation 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

The worker submitted a request for determination in connection with services performed for the firm from 2015-2024 as a hairstylist. Services performed included chemical services, cutting, shampooing, sweeping, laundry, cleaning. Stocking, etc. The worker submitted Form SS-8 as they believe they were misclassified. The worker believes they were an employee as they were required to work a set schedule. The firm collected money for the services performed by the worker. The worker was required to ask for time-off and received a week's vacation.

The firm's response stated its business offers cosmetology services, such as hair care services and treatments. The worker was engaged as a hairstylist. Services performed included providing cosmetology services based on their state cosmetology license and servicing clients with a focus on hair color and cutting. The worker was classified as an independent contractor as the worker was responsible for maintaining their license, continuing education, and all professional tools needed to perform services. The work dictated their own schedule and was responsible for brand in imaging and advertising. The worker had significant investment in performing services.

The firm stated they did not provide any training or instructions for the worker as they were licensed, responsible, and experienced. The firm provided work assignments via the firm's software platform. The worker determined the methods by which those assignments were performed. If problems or complaints arise, the firm would be contacted. The worker was responsible for problem resolution which would often mean a "re-visit" from the client. The firm did not require the worker to complete any reports. The firm did not require the worker to attend any meetings. Services were performed on the firm's premises on an as-available basis. The firm required the worker to personally perform services. The firm was responsible for the hiring and paying of substitutes or helpers. The worker stated they received instructions regarding when the worker was to perform services and when they could leave as well as what products were to be used. The firm provided work assignments. Both parties determined the methods by which those assignments were performed. The firm was responsible for problem resolution. The worker was required to attend staff meetings. There was no penalty for non-attendance. Services were performed on the firm's premises on a regularly scheduled basis.

The firm stated they provided salon furniture, salon station and chair, salon sink, and back bar products. The worker provided shears, shear sharpening and maintenance, blow dryers, combs, brushes, and professional products. The worker did not lease a space, equipment, or a facility. The worker did incur job-related expenses in the performance of the services for the firm. The firm did not reimburse the worker for any job-related expenses. Clients paid the firm. The worker was paid a commission rate of pay. The worker could not request advance pay. The worker did take a financial risk and could suffer a financial loss performing services by mitigating client concerns with could lead to "re-visits", refunds, or professional liability. Both parties set the rate of pay for the services provided. The firm set the rate for pay for products sold. The firm did not carry workers' compensation insurance on the worker. The worker stated the firm provided the building, cutting chair, wash sink, and hair processor. The worker provided scissors, blow dryer, and clippers. The worker did not incur any job-related expenses in the performance of the services. The worker did not take a financial risk and did not suffer a financial loss performing services. The firm set the rate of pay for the services provided and products sold.

The firm states there were no benefits made available to the worker. Either party could end the work relationship without penalty. The worker did not perform similar services for others during the term of the work relationship. There were no agreements prohibiting competition. The worker advertised their services on social media and email. Services were performed under the worker's state license on the firm's premises. The firm ended the work relationship. The worker stated they received paid vacations. The worker did not advertise their services. Services were performed under the firm's business name.

Analysis

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.

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, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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. 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. In this case, the firm required the worker to personally perform services. Furthermore, the services performed by the worker were integral to the firm's business operation as a hair salon. The firm provided work assignments by virtue of the customers served and required the worker to perform all services on the firm's premises. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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. In this case, the worker did not invest capital or assume business risks. The firm provided the premises and utilities and did not require the worker to lease any space, equipment, or facilities. Based on the commission pay arrangement the worker could not realize a profit or incur a loss. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

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 the firm's business as a hair salon. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. In this case, the worker was not allowed to perform services for a competing firm during the work relationship and for a set period of time thereafter. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker's services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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 firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.