

SS-8 Determination—Determination for Public Inspection

Occupation

06AAS Aides/Assistants

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 real estate business. The worker provided services for tax year 2016 and 2017. The firm contends she was a License Realtor, therefore reported her wages on Form 1099-MISC. The firm stated no training was given as she was already licensed. Work assignments came from the firm. The firm indicated the worker provided comparative Market Analysis reports. There was no set work schedule. Services were performed on the firm premises. The worker was required to perform services personally. The worker was paid by the hour. The customer paid the broker. The firm indicated they did carry workmen's compensation insurance. Either party could terminate the work relationship without incurring a penalty or liability. The work relationship ended mutually. No other documentation or substantiation was provided by the firm, other than a copy of the worker's resume'.

The worker stated she answered an advertisement for the firm for an administrative assistant and for a real estate assistant. Copies of the advertisements placed by the firm was provided. She applied for both, submitting her resume' (copy provided by both firm and worker). She was hired, via e-mail for the administrative position on the team (copy of that e-mail was provided.) That email also asked the worker if she wanted taxes withheld or not. The firm stated either way was fine with them. (copy of that e-mail was also provided.) The worker provided a copy of the W-4 completed for the firm. The worker was represented as Administrative assistant to [REDACTED] company e-mails shows her correspondence signed as such.) The worker indicated training was provided two other sales support persons of the firm. Work assignments were given from the firm. No formal reports were required. She did give the firm a report at the end of the day what was done and what remained to be done. The worker agreed all work was performed on firm premises. The services were performed four days a week. The worker indicated she attended one staff meeting. The firm provided all office equipment and supplies. The worker agreed she was paid by the hour (\$16.00 per hour), the client paid the firm. The worker indicated she had obtained her Real Estate License, but a license is not effective or valid until certain fees are paid and a State Licensed Real Estate Broker agrees to supervise their work. The agent she worked for was not a Broker and was not interested in having the Mortgage Broker supervise her license. Therefore, she could not act in any capacity as a real estate agent. The worker stated the firm terminated the work relationship (copy of that termination e-mail also provided.)

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 information, evidence and documentation provided by both parties, 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 is somewhat correct in stating licensed sales individuals are paid as independent contractors. However, "Qualified Real Estate Agents" under IRC 3506 criteria is: 1 the worker must be a licensed real estate agent. 2. All remuneration for services is directly related to sales rather than the number of hours worked, and 3. A written contract must exist between parties, which specifically stated the worker would not be treated as an employee for federal tax purposes. In the instant case, none of the qualifications took place. The worker's was not valid as the fees were not paid, nor did she have a Broker to sponsor that license. She was paid by the hour, not by sales made, and there was not valid contract between parties. Therefore, she is not considered to be a valid, licensed real estate agent. Substantiation was provided, to document she was hired for the administrative position, and was paid by the hour. All services were performed on the firm premises, utilizing the firm's office space and equipment. Indicating no financial responsibility on behalf of the worker.