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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation Medical Practitioners/Scientists/Therapists	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 is seeking a determination of worker classification for services performed for the firm as a registered dental hygienist from January 2024 until April 2024. The worker filed a Form SS-8 because they believe that they erroneously received a 1099-NEC from the firm instead of a W-2.

The worker believes that they were an employee of the firm because under state law, their profession is required to perform services under the supervision of a dentist, they saw the firm's dental patients, and they used the firm's equipment. Services performed by the worker were controlled by the firm and they were not considered to be an independent contractor as a result. The worker performed the same services for the firm between 2022 and 2023 and also received 1099-NEC from the firm for those years. There were no written agreements between the parties.

The firm states that they are a dental office. The worker performed services for the firm as a dental hygienist, responsible for cleaning, scaling, and polishing teeth for patients. The firm classified the worker as an independent contractor because the worker was not on payroll as they performed services temporarily for the firm, the worker was paid at a different rate than other hygienists, and it is common practice for dental offices to treat relief hygienists as independent contractors. The worker agreed to clean teeth in the firm's dental office for small periods of time at short notice if they were available.

The firm states that they did not provide training or instruction to the worker. Upon arrival, the worker would review columns of patients and begin to work following industry standards. The worker was a licensed professional and relied upon their own judgement to determine the methods by which job duties were performed. If the worker encountered any problems or complaints, they were required to contact the dental office. The dentist on duty would be responsible for problem resolution. There were no reports required of the worker. Services were performed as needed and as available at the dental office. There were no meetings required of the worker. The firm required the worker to personally perform services. The worker could hire helpers or substitutes with no approval from the firm and would not be responsible for their payment. The worker states that they had previous training and did not require training from the firm as a result. The dentist or office manager provided job assignments to the worker in person. The dentist/firm owner determined the methods by which job duties were performed. If the worker encountered any problems in the performance of their job duties, they were required to contact the dentist or office manager for problem resolution. Services were performed as scheduled and as available at the firm's dental office location. The worker had no authority to hire helpers or substitutes.

The firm states that they provided a room with dental plumbing, cleaning instruments, and PPE. The worker provided magnification for vision and any preferred instruments. The worker did not lease any space, facilities, or equipment. There were no job-related expenses incurred by the worker. Customers paid the firm. The firm paid the worker a lump sum payment with no access to advance pay. The firm carried worker's compensation insurance on the worker. The worker did not take a financial risk or suffer a financial loss while working for the firm. The firm set the rate of pay for services performed. The worker states that the firm provided all supplies, equipment, materials, and property. The worker did not provide anything or incur any job-related expenses. The firm paid the worker a daily rate of pay. The worker had no exposure to financial risk or loss while working for the firm. The firm set the rate of pay for services performed and the price of products sold.

The firm states that they did not provide benefits to the worker. The relationship between the parties could be terminated by either party without liability or penalty. The worker performed similar services for other firms and did not need approval from the firm. There were no non-compete agreements in place between the parties. The worker did not advertise their services to the public. The firm did not represent the worker to customers. The worker performed services under their own licensure and under the firm's business name. The job was completed, ending the work relationship. The worker states that they performed services under the firm's name and did not advertise their services to the public. The worker ended the work relationship between the parties.

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. 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 dental office. The firm provided work assignments by virtue of the patients served and assumed responsibility for problem resolution. Additionally, state law prohibits the worker from performing services unless they are under the supervision of a dentist at the firm's dental office location. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. 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.

Payment by the hour, day, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. In this case, the worker did not invest capital or assume business risks. 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. As stated by both parties, the worker did not incur any job-related expenses or have any financial risk in the performance of their job duties. Based on the daily rate of pay arrangement the worker could not realize a profit or incur a 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 dental office. Both parties retained the right to terminate the work relationship at any time without incurring a liability. 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 fact, state law prohibits the profession of the worker from being performed as self-employment because the worker must perform services at a dental office location under a dentist's supervision. 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.