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 submitted a request for determination in connection with services performed for the firm as a medical transcriptionist for 2023-2024. Services performed included completing medical documentation for account assigned to the worker. This consisted of progress notes, summaries, procedure notes, and clinic visits. The worker filed Form SS-8 as they believe they were misclassified. The worker believes they were an employee as they received directives from the firm. The worker was required to work set hours, complete training, and attend meetings. The worker had previously performed services for the firm from 2018-2021.

The firm's response stated its business provided medical transcription services to support healthcare providers. The worker was engaged as a medical transcriptionist. Services performed included converting dictated medical reports into written documents. The worker was classified as an independent contractor as the worker controlled how and when services were performed. The worker used their own equipment to perform services and had the ability to accept or decline work. The worker was paid on a per-line basis rather than an hourly rate of pay.

The firm stated there was no training or instructions provided to the worker. The worker was hired due to their existing experience and professional skills. The firm stated assignments were offered electronically. The worker was free to accept or decline work assignments. The firm's system determined the methods by which those assignments were performed. If problems or complaints arise, the firm's owner or consulting manager would be contacted as well as responsible for resolution. The firm did not require the worker to complete any reports or attend any meetings. Services were performed remotely on an as-available basis. The worker set their own hours and schedule. The worker was required to personally perform services. The firm was responsible for the hiring and paying of substitutes or helpers. The worker stated they received specific instructions on accounts received that were to be followed. The firm provided training which was unpaid and mandatory. The firm provided work assignments and determined the methods by which those assignments were performed. Reports and meetings were required. The worker stated they were required to work assigned hours but could also work outside of those hours.

The firm states they did not provide any of the supplies, equipment, or materials needed to perform services. The worker provided a computer, headset, foot pedal, internet and office equipment. The worker did not lease space, equipment, or a facility. The worker did not incur any job-related expenses in performing services for the firm. Customers paid the firm. The worker was paid for each transaction line completed. The worker could not request advance pay. The worker did take a financial risk and could suffer a financial loss performing services. Both parties agreed to the rate of pay for the services provided. The firm did not carry workers' compensation insurance on the worker. The worker stated the firm provided the software needed to perform services. The firm set the rate of pay for the services provided.

The firm stated there were no benefits made available to the worker. Either party could end the work relationship without penalty. The worker performed similar services for others during the term of the work relationship. There were no agreement prohibiting competition. Services were performed under both the firm and worker's name. The worker ended the work relationship.

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, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to an oral 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.

A worker who is required to comply with another person’s instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. 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. In this case, the firm provided work assignments and ultimately assumed responsibility for problem resolution. 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.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the worker was experienced in this line of work and did not require training or detailed instructions from the firm. The need to direct and control a worker and her services should not be confused with the right to direct and control. The worker provided their services on behalf of and under the firm’s business name rather than an entity of their own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and her services in order to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm stated they provided the worker with freedom of action as to when they performed services, this in and of itself does not determine the worker’s status as an independent contractor. The whole relationship needed to be analyzed to determine the worker’s correct employment tax status. An important factor of determining a worker’s status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and their clients.

The firm stated the worker performed similar services for others. If a worker performs more than de minimis services for a multiple of unrelated persons or firms at the same time, that factor generally indicates that the worker is an independent contractor. 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.

Payment by the hour, 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. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. 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. Based on the 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. Both parties retained the right to terminate the work relationship at any time without penalty. There is no evidence to suggest the worker performed similar services for others as an independent contractor. 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.