

SS-8 Determination—Determination for Public Inspection

Occupation

06NUR Nurses

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 physicians office. The worker performed services for the firm as a nurse practitioner for tax years 2016, 2017 and 2018. The firm reported the income for 2016 and 2017 on Form W-2. The firm also reported income earned on Form 1099-MISC in 2017. The firm indicated the worker was treated temporarily as an independent contractor due to a problem with the payroll company. The worker has indicated there has been no changes in the services provided. She indicated also the firm changed bookkeepers and payroll companies in 2017. Both parties agree the worker is still employed with the firm. both parties agree the services are performed on the firm premises, and the firm provides all equipment and supplies. Both Agree the worker is paid by the hour. The worker did provide a copy of the original employment offer that outlined the pay and benefits she was given.

Analysis

The withholding of income tax or the Federal Insurance Contributions Act (FICA) tax from an individual's wages is "treatment" of the individual as an employee, whether or not the tax is paid over to the Government. The filing of an employment tax return and Form W-2 for a period with respect to an individual, whether or not tax was withheld from the individual, is "treatment" of the individual as an employee for that period.

The worker received a Form W-2 and a Form 1099-MISC from you in the course of the work relationship, and the services did not substantially change. As previously stated, the issuance of Form W-2 and/or the withholding of taxes on income for an individual would be considered treatment of the individual as an employee, and would apply in this case.

CONCLUSION

Based on the information provided and common law, I find this to have been an erroneous misclassification of employment. Whether the company changed payroll services or had a problem with the current service, taxes were not withheld by the firm. There had been no changes in the services performed, work schedule, or rate of pay given. All income should have been reported on Form W-2. We find the worker to have been an employee for all income received. As such, the income previously reported on Form 1099-MISC should be corrected and reported as wages.