

SS-8 Determination—Determination for Public InspectionOccupation
06SCI.2 ScientistDetermination:
☒ 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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the firm, we requested information from the worker concerning this work relationship. The worker responded to our request for completion of Form SS-8.

From the information provided the firm is in the business of engineering geology and geotechnical engineering services and the worker was engaged under a written agreement as a geologist and field geologist. The worker's duties included taking water level measurements, evaluating test pits, and reporting. The worker's services were performed in 2012 and 2013.

The firm states the worker was not given specific on-site training as he was already trained as a geologist but his work was always supervised and reviewed by their senior engineer. The worker's assignments were given out by the senior engineer on an as needed basis. Both the firm and the worker determined how the worker performed his services. The worker was required to personally perform his services on the job site and in their office. The worker was required to notify the senior engineer if any problems or complaints arose and all were responsible for the resolution. The worker did not have a set routine or schedule and the hours he worked and the number of hours he worked varied. The worker attended staff meetings but the firm states he was not required to do so.

The firm states they provided an office and computer to the worker in order to perform his services. The worker provided home office space, a computer, computer programs, a monitor, and a telephone. The worker incurred expenses for travel, mileage, hotel/per diem, and equipment rental. The firm reimbursed the worker for all of these project related expenses. The clients paid the firm for services rendered by the worker and the firm paid the worker at an hourly rate. The firm states the worker negotiated a rate of 50% higher than other engineers in their office at the same level of work. The firm did not carry worker's compensation insurance on the worker.

The firm states the worker performed similar services for others under his own business name and he advertised his services via his business website and business cards. The firm states the worker worked for himself and his own business and they provided instructions to the worker for work he did for them.

The firm provided a copy of a business card which indicates the worker owned his own business. The [REDACTED] Secretary of State website indicates the worker started his own business in October 2013 towards the end of the work relationship with the firm. However, there was no evidence presented or found in this investigation that the worker performed his services for the firm under this business name or on behalf of the worker's own business. All of the worker's services were performed under the firm's business name.

The written agreement between the firm and worker indicates the worker would be an independent contractor while performing services for the firm. Either party could terminate the work relationship at any time without either party incurring a liability.

Analysis

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. Often the skill level or location of work of a highly trained professional makes it difficult or impossible for the firm to directly supervise the services so the control over the worker by the firm is more general. Factors such as integration into the firm's organization, the nature of the relationship and the method of pay, and the authority of the firm to require compliance with its policies are the controlling factors. Yet despite this absence of direct control, it cannot be doubted that many professionals are employees. In this case, the worker was experienced in this line of work and did not require training or extensive instructions from the firm. However, the firm does state that the worker's services were always supervised and reviewed by the senior engineer. The worker performed his services on behalf of and under the firm's business name rather than an entity of his own. All work products bore the firm's name and not the worker's and not the worker's business. The clients paid the firm for services rendered by the worker and the firm paid the worker; therefore, the client relationship was between the firm and their client not the worker and the client. These factors gave the firm the right to change the worker's methods and to direct the worker to the extent necessary to protect their financial investment, their business reputation, and their relationship with their clients.

While the firm provided the worker with freedom of action as to when he performed his 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.

The firm's statement that the worker performed services on an as needed basis and did not have a set routine or schedule and therefore, an independent contractor is without merit. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. In addition, both employees (seasonal) and independent contractors can perform services when the needs of a business warrants and therefore, not a determining factor in status of a worker. The existence of a continuing relationship indicates an employer/employee relationship was established.

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 the firm reimbursed the worker for all job related expenses he incurred. Therefore, the worker did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

While the worker provided his own computer, this is not considered a significant investment on the worker's part. 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. Special scrutiny is required with respect to certain types of facilities, such as home offices.

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's services were a necessary and integral part of the firm's business. 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. It is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting oneself and be an employee of one or all of whom engages him.

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, the firm's statement that the worker was an independent contractor pursuant to an 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.