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

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
Medical Practitioners/Scientists/Therapists	☒ 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 seeks determination regarding their classification as an independent contractor for the firm as a massage therapist. The worker's duties included providing therapeutic massage services to clients, assessing clients' needs, maintaining accurate client records, preparing treatment rooms, and performing general administrative and office duties as needed. The worker provided a written agreement between the two parties.

The firm describes itself as a wellness studio. The firm listed the worker's title as a manual therapist. The firm listed the worker as an independent contractor due to an agreement between the parties. The firm provided a written agreement between the parties.

The worker was a licensed massage therapist. The firm provided work assignments to the worker. The worker determined the methods and techniques used to perform massage therapy services, consistent with the requirements of the worker's professional license. The firm was ultimately responsible for the resolution of all complaints and issues. The worker provided services at firm's premises. The worker was required to personally perform services. The firm was responsible for hiring and paying all substitutes or helpers.

The firm provided all supplies, equipment, materials, and property. The worker did not lease any equipment, space, or facility. The worker was able to incur any expenses. The worker received a commission. The worker was unable to receive advance pay. All customers paid the firm. The firm did not carry workers' compensation insurance on the worker. The worker was unable to incur a financial risk or an economic loss.

The firm did not provide the worker with benefits. The relationship between the parties could be terminated by either party without incurring liability or a penalty. The worker did not perform similar services for others. The worker did not advertise. The work relationship has ended.

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 they have 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

Therefore, the payer's statement that the worker was an independent contractor pursuant to a written 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.

The services performed by the worker were integral to the firm’s business operation. The firm provided work assignments and assumed responsibility for problem resolution. These facts are evidence that 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, 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 payer 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 payer 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. 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 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 payer's business. 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. 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 payer 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 payer can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.