

## SS-8 Determination—Determination for Public Inspection

Occupation

07ESW.10 Enforcement/Security

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 filed the SS-8 work classification request because he received both Form W-2 and Form 1099-MISC for tax years 2008 through 2015. both parties provided information pertaining to this work relationship. The firm indicated the income reported on the W-2 was for services performed as a bailiff and the income reported on the Form 1099-MISC was for income computed for various fees established by the court.

Information provided states the worker is an elected official to perform services as a constable for Forrest County. The firm has indicated the worker is an independent contractor as an elected official paid statutory fees for discrete services rendered without instruction, control, or supervision by the county. The worker performed services as a constable, bailiff and process server.

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## Analysis

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Section 3401(c) of the Internal Revenue Code (IRC) provides that the term “employee” for income tax withholding purposes includes an officer, employee, or elected public official of the U.S., a State, or any political subdivision or instrumentality thereof. Section 31.3401(c)-1(a) of the Employment Tax Regulations further expands the definition of “employee” for income tax withholding purposes to include officers and employees, whether elected or appointed, of a state or political subdivision thereof. Therefore, common law is not applied and elected and appointed officials are subject to federal income tax withholding regardless of their status for other purposes.

### Conclusion

The worker is an elected constable for Forrest County. Therefore all wages earned in that capacity of constable, whether it be as a bailiff, process server, law enforcement etc, should have been reported on Form W-2. The County provided training to the officer, therefore, further instruction and control would not have necessary to perform additional services, as his roll as an elected constable. Elected officials are deemed to be employees for all Federal employment tax purposes.