

SS-8 Determination—Determination for Public Inspection

Occupation

08MUS.1 MUSICIAN

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 firm is a tax-exempt organization that engaged the worker as an organist for its church. The worker provided his services as an organist for the years 2011 through 2013. The income he received for the services he provided for the years 2012 and 2013 were reported on Forms 1099-MISC.

The worker stated he was recruited by the pastor of the church. The worker stated he received monthly training regarding music, leadership, and helping with ministries. He received his assignments directly from the firm and the firm determined the methods in which the assignments were performed. The worker received direction and instruction from the firm regarding calls and funeral services. The worker's responsibilities included: attending weekly meetings and all rehearsals, playing for visiting recording artists and providing music for Wednesday, Friday and Sunday services. Both the firm and the worker stated that he was required to attend the meetings and rehearsals and there were penalties for not attending. If he was going to be late he was required to call. Both the firm and the worker stated that he provided his services on the firm's premises and it was understood that he would provide these services personally. If any substitutes or helpers were needed it was the firm's responsibility to hire and compensate the helpers.

The firm furnished the worker with the organ, hymns and workspace. The worker did not furnish any of the music or equipment used in performing the services. The worker received a salary. The worker did not have a substantial investment in equipment or facilities used in the work, and did not assume the usual business risks of an independent enterprise.

The worker stated he was eligible to receive vacation pay. He was required to perform the services under the name of the firm and for the firm's congregation and was represented as their employee. Either party was able to terminate the relationship without incurring penalty or liability, in fact, the relationship ended when the worker was terminated

Analysis

The worker rendered his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship.

He did not have any financial investment in the business and could not have incurred a business profit or business loss in the performance of his services for the firm. The worker provided his services under the firm's name, and his work was integrated into the firm's business, and they were not part of an independent enterprise. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.