

**SS-8 Determination—Determination for Public Inspection**

Occupation

08PEN Performers/Entertainers

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**

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 worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a nightclub and the worker was engaged as a disc jockey playing music for evening events. The firm believes the worker was an independent contractor while performing services for them because he supplied his own equipment and music for the venue. The worker believes he was an employee (EE) while performing services for the firm because he had a set work schedule, there was a set format of presentation, he was unable to use his management skills, he was regularly treated as a junior employee, the job with the firm was the only employer for the year, most equipment was owned by the venue although he did provide some DJ equipment, and he could be fired. There was no written agreement between the worker and the firm and the worker was not required to submit invoices.

The worker states that unlike conventional DJ work, there was specific training required to perform his services. The theater shows at the firm's premises required liaising with performers, preparing music and using special equipment i.e. sound meter and hand-held devices. The worker received his work assignments through a monthly work roster. The worker states the firm's owner/manager determined how he performed his services. The worker personally performed his services at the firm's venue. The worker was not required to submit reports to the firm and the worker states he initiated management meetings. The worker states he worked anywhere from eight (8) to twelve (12) nights per month. The worker states substitutes were never provided.

The worker states the firm provided the sound system, lighting, microphones, DJ mixer, DJ equipment, smoke machine, lighting controllers, laser lighting, etc. and he provided a laptop computer and DJ controller/mixer. The worker states he incurred expenses for gas to and from work, internet use, and depreciation of equipment. The firm states the worker was compensated per gig and the worker states he was compensated by a nightly wage based on an hourly rate. The firm reported the worker's 2017 earnings on a Form 1099-MISC.

The firm states the worker performed similar services for others and the worker states he did not. The worker states he was presented as in-house entertainer to the firm's customers and his stage name was not used and he was not promoted as a separate entity. Either party could terminate the work relationship at any time without either party incurring a liability.

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## Analysis

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As in this case and 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. In this case, the worker was experienced in this line of work and from internet research, he performed DJ services for others. There was no evidence presented or found in this relationship that the firm retained direction and control over the worker and his services that established an employer/employee relationship.

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 invested capital or assumed business risks, and therefore, he had the opportunity to realize a profit or incur a loss as a result of the services provided.

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, we believe the worker was engaged in an independent enterprise.

Based on the above analysis, we conclude that the firm did not exercise direction and control over the worker to the degree necessary to establish that the worker was a common law employee, but found that an independent contractor relationship existed.