

# SS-8 Determination—Determination for Public Inspection

Occupation 08PEN.1 Performer/Entertainer	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 in the business of presenting puppet shows for children and their families. The worker provided his services to the firm as a puppeteer with services such as; staging and presenting fairy tale puppet shows in the firm's theater in 2012 and received the Form 1099-MISC for these services.

The firm stated that although they did not provide training or instruction for the worker, one of the firms' workers was a trained marionette and they all shared their best practices. The worker stated that he was told by the firm when to show up for the firm's shows and parties and the firm determined the methods by which the assignments were performed. The firm contends that the worker was contracted by them to stage and present two runs of puppet shows, and the worker determined the methods by which the assignments were performed. If problems or complaints arose the worker was required to contact the firm's on-site manager and the on-site manager was responsible for problem resolution. The worker's schedule varied, he worked according to the firm's schedule of shows. Additionally, the firm added that the worker was required to perform either two or three 35 minute puppet shows per day. He provided his services personally on the firm's premises. The firm explained that the worker did not provide his services personally, but he did provide his services on the firm's premises. The worker reported that the firm held occasional meetings as required. The worker indicated that if additional help was required, the firm hired and compensated the helpers. The firm maintains that if additional help was required, the worker hired the helpers and the firm compensated them.

The worker stated that the firm provided all the necessary supplies and equipment needed to provide his services. The firm advised that they provided the worker with the performing space, vintage puppets, set properties, sound trackCD's, and the worker provided his talent, skills, training, substitutes, repair materials, and tools. Additionally, the firm explained that the rights to the sound trackCD's were held by a third party and licensed to the firm. The worker did not lease any equipment nor were any business expenses incurred in the performance of his services. The worker was paid based on the number of shows. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. He stated that the firm established the level of payment for the services the worker provided.

The worker maintains that he did not perform similar services to others during the same time period. The firm contends that the worker did provide similar services to others during the same time period. He provided his services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. Also, the firm added that the relationship can be terminated provided it was at the end of an engagement, or had the contract for performances not been fulfilled or otherwise satisfied. In fact, the worker indicated that the relationship ended when the worker was fired. The firm expressed that the relationship ended when the job was completed.

---

## Analysis

---

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

Although the firm submitted a Form W-9 believing that this is indicative of an Independent Contractor status, the fact remains that the Form W-9 is simply used as an information document to verify a Taxpayer Identification Number, or a valid Social Security number and has no bearing on the SS-8 determination process. The Form W-9 is also used to indicate that the worker is not subject to "Backup Withholding" Backup Withholding is a specific type of withholding and should not be confused with Federal Income Tax withholding.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm did not provide the worker with training, as he was hired due to his expertise in this field of work. The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. Integration of the worker's services into the business operations generally shows that the worker is subject to direction and control. When the success or continuation of a business depends to an appreciable degree upon the performance of certain services, the workers who perform those services must necessarily be subject to a certain amount of control by the owner of the business. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. The worker had a continuous relationship with the firm as opposed to a single transaction. A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. 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. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. 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. If the person or persons for whom the services are performed hire, supervise, and pay assistants, that factor generally shows control over the workers on the job. However, if one worker hires, supervises and pays the other assistants pursuant to a contract under which the worker agrees to provide materials and labor and under which the worker is responsible only for the attainment of a result, this factor indicates an independent contractor status. However, it is also possible that the individual may be an employee acting in the capacity of a foreman for, or a representative of, the employer. 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. The fact that the worker has an investment in repair materials and tools is not uncommon in this type of occupation and is not sufficient to show an independent contractor relationship. His pay was based on the number of shows. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. 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. However, it is possible for a person to work for a number of people or firms concurrently and be an employee of one or all of them. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm's business. Either the firm or the worker could terminate the agreement.

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