

SS-8 Determination—Determination for Public Inspection

Occupation

08PRO Professional Athletes

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 initiated the request for a determination of his work status as a manager and lead instructor/head coach of martial arts in tax years 2017 and 2018, for which he received Form 1099-MISC. In this position he would open/close the school, coordinate events and conferences, and do clean-up. The firm's business is described as a martial arts studio.

The firm's response was signed by the owner/head instructor. The firm runs an athletic program for personal development, teaching life skills through martial arts. The worker provided services as a lead martial arts instructor.

The firm submitted a copy of the signed 'offer letter' between the worker and firm/owner/CEO, which provides the following: • engaged for position of lead instructor • the worker would report directly to the Director of Operations effective 11/13/2017 and all customer service aspects and administrative responsibilities will be reviewed and managed by the Director of Operations • \$XX/hour for the 60-day probationary period; upon review of performance the pay may increase; this is a 1099 position offered as an Independent Contractor; (worker) responsible for his own taxes and for providing his own liability insurance • the primary focus is to run a traditional floor that reflects the teachings of ZZZ; teaching all belt levels, take attendance daily, track the development of students; supervise and ensure that all tests, birthday parties, and parents' nights out are successful and run at a level of excellence • in this position he was also tasked with overseeing the development of a Leader-in-Training Program, developing an assistant schedule; growing the 'traditional and weapons' programs; and he would be required to meet with the Director of Operations and Master YYY weekly to track the progress of development of these programs to ensure the continued success of the firm/martial arts studio • in addition, he would be responsible for maintaining the firm's social media presence, and track that each instructor is posting once per shift to the social media page • included a list of scheduled days/hours, although subject to change due to closures and may increase due to birthdays and PNO's.

The worker indicated he was given specific training and instructions on the curriculum to teach and that the firm gave him his job assignments via phone or in writing. The firm determined the methods by which the worker's services were performed; and, any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered Monday through Thursday and Saturday on the firm's premises. The worker noted that there were required manager meetings and he could be fired for not attending. The worker was required to perform the services personally.

According to the firm, there was no specific training and instructions. The job assignments were a traditional martial art which has a system of curriculum that he had achieved previously. The worker determined the methods by which the worker's services were performed. The worker notified the firm any problems or complaints which were resolved by the firm. The worker's services were rendered on the firm's premises with general work hours which could vary depending on class size and other events.

The firm and worker acknowledge the firm provided the facility. The worker furnished his personal martial arts weapons and sparring gear. The worker did not lease equipment, space, or a facility. The worker did not identify any additional expenses incurred in the performance of his job with the firm; however, the firm noted he had expenses for equipment, weapons, uniform, and additional training certifications. Both parties agree the firm paid the worker an hourly wage and that the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker's financial risk was limited to no taxes being withheld, no health benefits, and no workers' compensation insurance coverage. The firm and worker agree the worker did not establish level of payment for services provided or products sold; however, the firm added that the worker set his own price for private lessons and he collected his fees directly.

The firm and worker concur that no benefits such as paid vacations, health insurance, paid holidays or sick days were extended to the worker and that either party could terminate the work relationship without incurring a liability or penalty. The worker stated he was not performing same or similar services for others during the same time frame; the firm had no knowledge as to whether he was or was not working elsewhere. The firm noted there was a mutual agreement to end work arrangement; the worker stated he was fired.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

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.

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 establishment of set hours of work by the person or persons for whom the services are performed is a factor indicating control. If the nature of the occupation makes fixed hours impractical, a requirement that workers be on the job at certain times is an element of control.

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 firm 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 firm 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 of a specified amount that need not be repaid when it exceeds earnings.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

The firm's statement that the worker was an independent contractor pursuant to an 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.

We have considered the information provided by both parties to this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; the worker did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided. 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. 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 firm's business.

CONCLUSION

Based on the above analysis, we conclude that the firm 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.