Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
08PRO Professional Athletes	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] 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 submitted a request for a determination of worker status in regard to services performed for the firm from January 2018 to December 2018 as a part-time assistant coach. The services performed by the worker included assisting coaches of youth lacrosse players during training sessions and camps. The firm issued the worker Form 1099-MISC for the year in question. The worker filed Form SS-8 as he believes he erroneously received Form 1099-MISC.

The firm's response states its business is lacrosse coaching for youth and teens. The worker was engaged to coach lacrosse for three sessions. The worker was classified as an independent contractor as he was responsible for all aspects of the coaching engagement. The firm coordinated the location and athletes. There were no written agreements between the firm and worker.

The firm stated specific training and/or instruction was given to the worker via coaching meetings. The worker received work assignments via email. The firm determined the methods by which assignments were performed and assumed responsibility for problem resolution. Reports were not required. The worker's routine consisted of part-time work for summer camps and travel teams. Services were performed in area lacrosse fields. The firm expected the worker to attend coaches and curriculum meetings. There were no penalties if the worker was unable to attend. The firm did not require the worker to personally perform services. The firm ultimately hired and paid substitutes or helpers. The worker stated the firm verbally gave the coaching plan for daily activities during camps. His daily routine consisted of approximately 8 am to 3 pm, Monday through Thursday, during camp weeks. The firm required he personally perform services.

The firm stated it provided coaches lacrosse equipment, goals, cones, and balls. The worker provided coaching apparel and additional equipment he deemed necessary. The worker did not lease equipment, space, or a facility. It is unknown if the worker incurred expenses in the performance of services for the firm. The firm prepaid for travel costs, transportation, lodging, if necessary, and meals. Customers paid the firm. The firm paid the worker per coaching assignment; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The firm established the level of payment for the services provided. The worker stated he only provided his personal lacrosse stick. He did not incur expenses. The firm paid him an hourly rate of pay. He did not incur economic loss or financial risk.

The firm stated the work relationship could be terminated by either party without incurring liability or penalty. The worker did not perform similar services for others or advertise. The work relationship ended when the worker did not accept any additional coaching days; quit. The worker stated the firm represented him as an assistant coach to its customers. Services were performed under the firm's business name.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, a statement that a worker is an independent contractor pursuant to a written or verbal 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. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

Training a worker by requiring an experienced employee to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the person or persons for whom the services are performed want the services performed in a particular method or manner. This is true even if the training was only given once at the beginning of the work relationship. In this case, the firm provided specific training and instruction to the worker. The firm also provided work assignments, determined the methods by which assignments were performed, and assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

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. In this case, the worker did not invest capital or assume business risks. The term “significant investment” does not include tools, instruments, and clothing commonly provided by employees in their trade; nor does it include education, experience, or training. Based on the per coaching or hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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, 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. Both parties retained the right to terminate the work relationship at any time without incurring a liability. There is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker’s services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.