

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

Occupation 09CME.3 Crew Member	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 payer is sole proprietor in the business of cell tower repair and maintenance for AT&T which engaged the worker as a lead crew member from March 2013 to December 2013. There was no written agreement between the parties.

According to the worker the payer provided instructions as to the daily work to be performed and the times the worker was to start and stop working. The worker received instructions regarding the services to be performed every morning at the payer's premises. The payer determined the methods by which the assignments were performed. The payer was responsible for problem resolution. He performed the services on both the payer's premises and on the premises of the payer's customers. The worker was required to attend meetings and participated in conference calls. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker worked exclusively for the payer. His services were an integral and necessary part of the services the payer provided to its customers. The payer hired and paid any substitutes or helpers.

The payer furnished the worker with tools, materials and fuel, at no expense to him. The worker did not furnish any of the tools or equipment used in performing the services. The worker did not lease equipment. The payer provided the truck that the worker drove while performing services for the payer; thus, he did not have a significant financial investment in the payer's materials. The payer determined the fees to be charged to his clients. The worker was paid an hourly wage. The payer compensated the worker on a weekly basis. The payer's customers paid the payer. 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.

Either party had the option to terminate the worker's services at any time without incurring a penalty or liability. All work produced became the property of the payer. He did not advertise his services in the newspapers or the classified telephone directory, or maintain an office, shop, or other place of business. He was required to perform the services under the name of the payer and for the payer's clients. The relationship between the parties is ongoing through a different partnership of the payer's.

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**Analysis**

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The worker performed personal services on a continuous basis for the payer. Work was performed on the payer's premises and the payer's customer's premises, on a regular schedule set by the payer. The payer provided all significant materials and a workspace to the worker. The worker could not incur a business risk or loss. The worker was paid an hourly wage. The worker did not hold the services out to the general public. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, the worker did not advertise his services. This is a strong indicator that the worker is not an independent contractor. 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.