

## SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Truck Driver	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 a trucking business. The firm engaged the worker to perform services as a truck driver. The firm treated the worker status as independent contractor, and issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

The worker received training and instructions from the firm's client on how to haul its products. Work assignments came from the client's dispatcher. Work methods were determined by the client and worker. Work related problems and complaints were reported to the firm's representative and the client for resolution purposes. The firm required the worker to perform his services personally. The worker was required to provide the firm with DOT required driving logs, and a list of completed jobs for payment purposes.

The firm provided the truck and trailer, licenses, permits, and driving monitoring equipment. The worker provided his own fire retardant clothing, and steel toe work boots. The worker incurred expenses for the items he provided. The firm received payment from its client for services rendered. The firm paid the worker on a commission basis for completed loads. The worker's economic loss/financial risk potential related to damage/loss to the trucking equipment.

The firm did not carry workers' compensation insurance on the worker. Employment benefits (bonuses) were made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to others. The work relationship was continuous, and could have been terminated by either party at anytime without incurring liabilities.

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## Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm and its customer. The worker used the firm's trucking equipment, and supplies. He represented the firm's business operations in the performance of his services. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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. Also, if the firm has the right to control the equipment, it is unlikely the worker had an investment in facilities.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes. For correction assistance, you may refer to Publication 4341, which can be obtained at [www.irs.gov](http://www.irs.gov).