

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC Owner/Operator

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 firm is a freight trucking business and the worker who was a truck owner/operator entered into contracts to lease his truck with a driver to the firm to haul loads between pickup and delivery locations under the firm's authority. The firm provided the worker with business expectation training and instructions on providing paperwork, policies, and procedures. The firm's dispatchers offered jobs and job expectations as to what, when, and where the work needed to be performed. The worker contacted the dispatchers regarding problems or complaints with regard to jobs being performed for resolution. The firm required the worker to provide the firm with delivery and log reports. The worker's daily routines varied based on jobs the worker agreed to perform. The worker was required to attend safety meetings and other meetings as needed. The worker performed the services personally. The firm's approval was required for others to perform driving services due to FCC safety regulations. The worker would pay any substitutes or helpers that were approved.

The worker provided the truck, equipment, materials, fuel, and maintenance costs of the truck and equipment. The worker leased equipment and incurred trucking expenses. The firm deducted any trucking expenses from settlements. The firm paid the worker on a commission basis and the customers paid the firm. The firm did not carry workers' compensation insurance. The worker's economic loss and financial risks were related to loss or damages to equipment, materials, and operating costs. The firm and worker determined the level of payment for the services.

There were yearly independent contractor agreements entered into between the firm and the worker as the owner/operator of the truck to make deliveries. The firm did not provide the worker with any benefits. The worker did not perform similar services for others per the worker and was prohibited from doing so. The firm indicated the worker did perform similar services for others and was not required to obtain the firm's prior approval as long as business customers of the firm were not diverted to other companies. The worker did not advertise as a business to the public. The firm referred to the worker as a contracted owner/operator to the customers working under the firm's business name pursuant to FCC regulations. Both the firm and the worker retained the right to terminate the working relationship at any time without incurring any liability.

Analysis

In this case, the firm did not retain the right to change the worker's methods and to direct the worker. The firm offered the worker jobs to perform and allowed the worker to determine what, when, and how to perform the services. The worker could accept or decline jobs. The worker and firm determined the methods used by the worker to perform the services. Once the worker accepted jobs to perform the worker was required to complete the jobs according to FCC rules and regulations as well as meeting deadlines required by the customers in performance of the services. The firm required the worker to provide the firm with delivery and work related forms needed by the firm to obtain payment for the services and comply with FCC rules and regulations. The worker contacted the firm with regard to load problems or complaints only. The worker determined what, how, when, and where to perform services and the methods and means used to perform the service once jobs were accepted by the worker. These facts evidence behavioral control by the worker over the services performed for the firm.

In this case, the worker invested capital or assumed business risks, and therefore, did have the opportunity to realize a profit or incur a loss as a result of the services provided. The worker provided the truck, equipment, materials, and supplies needed to perform the services. The firm provided job opportunities. The worker incurred expenses for the truck and truck maintenance as well as other trucking related equipment and materials. The worker was paid by the firm and the customers paid the firm. The worker controlled the jobs performed and therefore the income received for the services. The worker could suffer an economic loss and had a financial risk with regard to the services performed. These facts evidence financial control by the worker over the services performed.

In this case, the worker entered into a working relationship/lease agreement with the firm to drive a truck leased by the worker and make deliveries during a schedule determined by the worker. The specific aspects of the working relationship were addressed in the agreement with regard to FCC rules and regulations being followed, safety, working for others, hiring and paying others, expense liability, payment for services etc. The worker performed services for the firm under the firm's authority on a variable flexible schedule determined by the worker. The relationship could not be terminated at any time without incurring a liability by the worker if the worker did not return all firm identification items or other items provided by the firm within 5 days after termination.

Based on the above analysis, we conclude that the worker is an independent contractor and not an employee of the firm. Accordingly, the worker's income is not subject to the Federal Insurance Contributions Act tax (FICA), Federal Unemployment Tax Act (FUTA), or the collection of income tax at the source of wages.