

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Drivers & Vessel Control	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 an interstate motor carrier which contracts with shippers throughout the country to handle the logistics of moving their freight from point to point. The worker was engaged by the firm as a truck driver. The firm reported the worker's remuneration on Form 1099-MISC for 2015. The worker drove a truck leased to him through a third-party company.

The parties entered into an agreement stating, among other things, that the worker understands that he is not required to purchase or rent any products, equipment, or services of the firm as a condition to entering into this agreement; the worker guarantees that the truck will be in compliance with all Federal and state laws and regulations; the worker will, at his own expense, maintain the equipment in good repair and operating condition, bear the cost of all operating expenses including fuel, fuel taxes, oil, tires, parts, accessories, supplies, [REDACTED] insurance, federal highway use taxes, DOT fines, and fines that are the result of the worker's carelessness, negligence or failure; and the worker is responsible for weighing all loads to determine that each load is within legally allowable weights.

The agreement also states that the worker will operate the equipment for the transportation of commodities as the firm may require, or furnish a qualified driver; all drivers, helpers, and laborers utilized by the worker are "employees" of the worker and must meet the stated guidelines; the worker must provide proof of insurance in the stated amounts; the worker will make equipment available annually at the firm's nearest local terminal or other qualified inspection station for DOT's required annual inspection; the worker expressly assumes the risk of any loss or damage to the equipment; advances of \$125 will be available every 7 days; and the firm will pay the worker within 15 days of his submission of a trip envelope to the firm.

Also stated is the mutual intention of the parties to establish an independent contractor relationship only; the term of the agreement shall be from calendar year to calendar year, prorated for any portion of a calendar year; the agreement and the lease of the equipment may be terminated at any time by either party upon 30 days' prior written notice; on the effective date of the termination, the worker will remove and return to the firm all signs and identification referring to the firm, all applicable plates and permits, shipping documents, logs, records, etc.; the firm will make a final settlement with the worker within 15 days of termination; the unused portions of all plates, licenses, and permits issued in the worker's name remain the property of the worker.

Analysis

Factors that illustrate whether there was a right to control how a worker performed a task include training and instructions. In this case, the firm relied upon the worker's prior training and experience to perform his services. It did not retain the right to change the worker's methods and to direct the worker.

Factors that illustrate whether there was a right to direct and control the financial aspects of the worker's activities include significant investment, unreimbursed expenses, the methods of payment, and the opportunity for profit or loss. 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.

Factors that illustrate how the parties perceived 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 were part of the service recipient's regular business activities. In this case, the worker was engaged in an independent enterprise.

CONCLUSION

Based on the above analysis, we conclude that the worker was an independent contractor and not an employee of the firm.