

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC Delivery/Transportation

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**

It is our usual practice in cases of this type to solicit information from both parties involved. Upon the submission of the Form SS-8 from the worker, we requested information from the firm concerning this work relationship. The firm responded to our request for completion of Form SS-8.

From the information provided the firm is a manufacturer of truck bodies. The firm states their customer sends them the chassis and they build and mount a body onto it to their clients' specifications. The firm states they use drivers who contract to deliver a truck for them and they are considered 1099 workers.

The worker performed services for the firm from October 2016 to December 2017 as a driver. The worker drove the finished truck to its destination and the firm would provide the worker with return transportation. The firm believes the worker was an independent contractor when he performed services for them as they state they have never hired and do not hire any employee drivers. The firm reports the worker's earnings on Forms 1099-MISC.

The firm states the transportation manager provided all instruction, information, and orientation needed for the worker in order to perform his services. The worker received his assignments from the transportation manager through verbal and written information provided about a particular delivery. The firm states the transportation manager determined how the worker performed his services and the worker was required to notify this manager if any problems or complaints arose while performing services. The worker was required to personally perform his services at their location with the majority of the time being spent on the road. The worker was required to submit mileage and expense reports to the firm. The firm states the worker's daily routine varied depending upon the particular truck, when the truck was ready to leave, how far the destination of the truck was, and how the worker would return. The firm states they are not aware of any meetings the worker was required to attend.

The firm states they provided the truck to deliver, a fuel card, a map or directions, and other instructions to the worker in order for him to perform his services. The firm states the worker occasionally incurred expenses for tolls or other small fees which they reimbursed. The worker was paid by the mile which the firm set and the clients paid the firm for the services rendered by the firm.

The worker was not eligible for employee benefits. It is unknown to the firm if the worker perform similar services for others. The worker did not advertise his services. The firm states the worker was represented as a contract driver to their clients which is the norm in the industry. Either party could terminate the work relationship at any time without either party incurring a liability. The firm states they terminated the work relationship.

Analysis

As in this case and in almost all worker classification cases, some facts point to an employment relationship while other facts indicate independent contractor status. The determination of the worker's status, then, rests on the weight given to the factors, keeping in mind that no one factor rules. The degree of importance of each factor varies depending on the occupation and the circumstances.

Evidence of control generally falls into three categories: behavioral control, financial control, and relationship of the parties, which are collectively referred to as the categories of evidence. In weighing the evidence, careful consideration has been given to the factors outlined below.

Factors that illustrate whether there is a right to control how a worker performs a task include training and instructions. In this case, the firm's transportation manager provided all instructions, information, and orientation that was needed to the worker in order to perform his services. While the worker provided the majority of his services out on the road, the need to direct and control a worker and his services should not be confused with the right to direct and control. The worker provided his services on behalf of and under the firm's business name rather than an entity of his own. The firm was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the firm the right to direct and control the worker and his services in order to protect their financial investment, their business reputation, and their relationship with their clients.

Factors that illustrate whether there is 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 did not invest capital or assume business risks, and therefore, did not have the opportunity to realize a profit or incur a loss as a result of the services provided.

The firm provided the vehicle and all necessary supplies, materials and equipment to the worker in order to perform his services. The worker did not incur any expenses that were not reimbursed by the firm and they set the mileage rate paid to the worker. The worker was not an owner-operator of his own truck paying all expenses related to the operation of that truck. There was no valid lease agreement between the firm and the worker regarding leasing a truck. Therefore, the worker did not have an opportunity to incur a loss as a result of his services. "Profit or loss" implies the use of capital by a person in an independent business of his own. The risk that a worker will not receive payment for his 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.

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.

If a firm has to make a worker "understand" or "agree to" being an independent contractor (as in a verbal or written agreement), then the worker is not an independent contractor. An individual knows they are in business for themselves offering their services to the public and does not need to be made aware of, understand, or agree to be an independent contractor.

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, co-adventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor because they do not hire employees 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.

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.