

SS-8 Determination—Determination for Public Inspection

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| 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 a trucking business as a fleet owner, providing its clients with trucking equipment and drivers, for the purpose of hauling freight under the client's operating authority. The worker in this case was engaged by the firm to perform services as an over the road truck driver, to use the firm's trucking equipment to haul freight for the firm's client. 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 firm and worker entered into a driver agreement, whereby the worker was to abide by the firm's policies and procedures in the performance of his services. The worker received a copy of the firm's employee handbook that was to be adhered to in the performance of his services. The firm provided the worker with orientation, and provided resources for the worker's use. Work assignments were received from the client, and subject to the firm's approval. Work methods were determined by the worker, the firm, and its client. Work related issues regarding loads were to be reported to the client, while equipment issues were to be reported to the firm for resolution purposes. The firm required the worker to provide the client with the necessary driver logs, and Pro Bills regarding each load the worker accepted from the client.

The firm provided the worker with the trucking equipment, and safety equipment needed to perform the services. The firm provided for the fuel, maintenance, and repairs of the trucking equipment. The worker provided for his own tools, GPS systems, and personal items needed for being on the road. The firm paid the worker a flat rate per mile as payment for his services. Clients paid the firm for services rendered. The worker's economic loss and financial risks related to loss or damage to the firm's trucking equipment, fines and traffic violations.

The firm did not cover the worker under workers' compensation insurance. Employment benefits were not made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to the public. The work relationship could have been terminated by either party at any time without incurring liabilities.

Analysis

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker performed his services in accordance with the firm's employee handbook, and under the firm's client operating authority. The worker's services were performed personally, using the firm's trucking equipment, representing the firm's business 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 of the firm Federal Employment Tax purposes. For employment tax correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov