

SS-8 Determination—Determination for Public InspectionOccupation
09DVC DriverDetermination:
☒ 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 information provided for this case shows the firm is a logistics business. The worker was engaged 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 ran a specific route each day. The firm advised the worker of the customer name and contact information, and coordinated the retrieval of the load and delivery based upon the timing dictated by the customer. The firm and worker both determined the work methods by which to perform the services. Work related issues that the worker could not resolve with the customer were reported to firm for resolution purposes. The worker performed his services personally. He was required to attend safety meetings, and to provide the firm with completed log books, mileage reports, truck inspection reports, and fuel reports in accordance with DOT regulations.

The parties disagree as to who provided the truck and trailer equipment used to perform the services. The firm stated that the worker leased trucking equipment from another party, and the worker indicated he used the firm's trucking equipment to perform his services. Neither party provided information to show that a valid written lease agreement existed between the parties regarding the trucking equipment. The information provided indicates that in December of 2016 the firm provided the worker with a blank lease agreement package for his signature. The worker provided the firm with his written refusal to sign the lease agreement, dated December 30, 2016. The worker also provided a copy of his written notice of resignation, effective January 22, 2017. The written resignation indicated that the firm's trucking equipment would be left at a specific location, the condition of the equipment, and that the firm's fuel card and truck keys would be left with the equipment.

The firm paid the worker a flat rate for each completed trip. Customers paid the firm for services rendered. The worker's economic loss/financial risks were related to claims against damaged product, damage to the truck and trailer, and claims for damage to customers' facilities. The worker was not covered under workers' compensation insurance. Employment benefits were not made available to the worker. There was no information provided to support that the worker performed similar services for others, or that he advertised his services to others while engaged by the firm. The work relationship was continuous, and 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 followed the firm's instructions, work methods, schedule, and routine in the performance of his services. The worker's services were performed personally at locations designated by the firm. The worker used trucking equipment provided to him, and used the firm's fuel card. 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