

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC Drivers & Vessel Control

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 general freight transportation business supporting the construction industry. The firm engaged the worker 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 his services as non-employee compensation.

On occasion, the worker obtained safety training from the firm's customers on loading and unloading material. The worker received work assignments through the firm's dispatch. The firm's owner and the worker both determined the work methods by which to perform the services. Work related problems were reported to the firm's owner for resolution purposes. The worker performed his services personally, with helpers that were engaged by the firm's owner, and paid by the firm for their services. The worker was required to provide the firm with cargo tickets, and daily log sheets.

The firm provided the worker with the trucking equipment and fuel needed to perform the services. There was no information provided to support that the worker provided any items needed to perform the services. The worker did not incur work related expenses. The firm paid the worker on a commission basis for his services. Customers made payment to the firm for services rendered. There was no information provided to support that the worker incurred economic loss or financial risks related to the services he performed for the firm.

The firm did not provide workers' compensation insurance coverage on the worker. Employment benefits (bonuses) were 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 the public 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, using its trucking equipment. The worker represented the firm's business operations in the performance of his services. These facts evidence that 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, and therefore retained behavioral control of the work relationship.

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