

**SS-8 Determination—Determination for Public Inspection**

Occupation

09DVC Drivers &amp; 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**

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 the business of recruiting, certifying and offering leads to independent drivers to perform driver related services for automotive dealerships. The firm states the worker was engaged from May 2016 to November 2017 as a driver who transports automotive vehicles for automotive dealerships. The firm believes the worker was an independent contractor (IC) while performing services for them because they had no control over what trips the worker chose to perform or how to perform services; the worker determined his own work schedule; and the worker was free to provide the same services for another company at any time he chose to. There was a written independent agreement between the firm's parent company and the worker in 2016 of which the firm provided a copy. This determination will focus on services the worker performed in the tax year 2017 for the firm.

The firm states during the application process, the worker was given access to a PowerPoint slide presentation that explained the nature of the work being offered. The worker received notification of auto transport trip offers through his cell phone using a third party application. The firm states their client determined the methods the worker was to follow. The firm states the worker contacted the company's dispatch personnel who assisted the worker in resolving problems or complaints. The firm states the software application (app) used by the worker to receive trip offers shows their company and the worker the amount to be paid for services performed; Otherwise, no reports were required from the worker. The worker received offers to transport automotive vehicles at a certain time and place and he performed such services at his own discretion. The firm states there were no set schedule of hours, days or locations that was required by the worker. The worker accepted and performed a number of trips at various times and dates for six different dealerships in two states. The worker could accept any offers by an automotive dealership within a certain radius of the worker's real time location. The average trip time varied by trip type and location. The worker was not required to attend meetings and the firm states the worker was responsible for the hiring and paying of substitutes or helpers.

The firm provided the software application and the worker provided a cell phone and a third party provided automobiles to be transported. Occasionally the worker was required to put gasoline in the vehicle being transported or pay road tolls. The firm states they initially reimbursed the worker for these expenses on a weekly basis and the automotive dealership reimbursed them for these expenses. The clients paid the firm for services rendered by the worker and the firm paid the worker at an hourly rate. The firm reported the worker's earnings on a Form 1099-MISC. The firm states the worker could incur a loss due to automotive damage in the event of a damage claim. The worker did not establish the level of payment for the services provided.

The worker was not eligible for employee benefits. The firm states the worker performed similar services for others and they were not aware of any advertising on the worker's part. The firm states they represented the worker to its customers as an independent contractor. The firm states the worker performed services under their customer's name. Either party could terminate the work relationship at any time without either party incurring a liability. The firm terminated the work relationship with the worker.

---

## 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 worker was given step-by-step instructions on how to perform his services. The worker provided his services on behalf of and under the firm's business name and for the firm's clients 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.

While the firm states the worker could accept or reject any job assignment offered to him, the worker could not refuse an assignment without jeopardizing his relationship with them or jeopardize the assignment of future jobs.

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.

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. Subcontractors are truly independent of a firm and a firm's business. Some of the characteristics of subcontractors are that they will not consider a firm as their boss, they will have a contract for each job, they will carry their own insurance, they will pay their own helpers and labor costs, they will not have to personally perform their services but have the ability to have anyone they engage perform services since that person would be representing the subcontractors business, and they would have their own business bank account and credit lines. Subcontractors will file tax returns and conduct themselves as real businesses. Subcontractors will dictate what services their business offers and how they process and perform those services, what software it would use, and how much it would charge for those services. A firm does not dictate how a worker will operate his or her own business. We did not find that the worker had this freedom or autonomy. There was no evidence presented and through our thorough research from various sources available to us, found no evidence that the worker operated a business, advertised his services to the public, had obtained a business license or had a business registration in the state which he performed services.

Both parties retained the right to terminate the work relationship at any time without incurring a liability.

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.