

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC Truck Driver

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 an interstate trucking company and they state the worker was engaged from March 2018 to July 2018 as an owner-operator truck driver. The firm believes the worker was an independent contractor (IC) while performing services as he provided and operated the equipment to perform the job without supervision. The firm reported the worker's earnings on Form 1099-MISC.

The firm advised the worker of available loads and the firm states the worker determined how to complete the loads. The worker was required to notify the shipper or customer if any problems or complaints arose. The firm states the worker could also contact them but the worker was responsible for the resolution to any problems or complaints. The firm states the worker was not required to personally perform his services and he performed his services at the shippers' location and customers' locations. The worker was required to submit signed bills of lading proving proof of delivery and any other document that was required under the Federal Department of Transportation (DOT) regulations. The firm states the worker set his own daily routine but he was required to abide by Federal DOT hours of service regulations. The worker was not required to attend meetings. The firm states the worker was responsible for the hiring and paying of substitutes or helpers.

The firm states they provided the specialty trailer and load securement tools and the worker provided the truck tractor and related tools and supplies. The firm states the worker incurred expenses for fuel and oil, insurance, repairs, supplies, lodging, meals, tolls, and permits and they did not reimburse the worker for any of these expenses. The clients paid the firm and the firm paid the worker a percentage of the freight charged. Advances towards future earnings were determined on a case by case basis and the advance would be deducted from subsequent settlements. The firm believes the worker could incur a loss due to damage to equipment, cargo claims, and expenses exceeding income. The firm and the customer established the level of payment for the services provided. The firm states the worker could decline any job.

It is unknown to the firm if the worker performed similar services for others or if he advertised his services. The firm states the worker was prohibited from accepting work from their clients and the worker could not use the truck which the worker drove for any other clients. The firm states they presented the worker to their clients as an owner-operator contractor and he performed his services under their business name. Either party could terminate the work relationship at any time without either party incurring a liability.

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 experienced in this line of work and did not require training or detailed instructions from the firm. 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.

While the worker may have been able to accept or reject an loads offered to him, this in and of itself does not determine the worker's status as an independent contractor. The whole relationship needed to be analyzed to determine the worker's correct employment tax status. An important factor of determining a worker's status is who had the contractual relationship with the client and whom did the client pay. In this case, that relationship was between the firm and 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. When there is a formal and valid lease agreement and the worker must pay a rental fee whether he or she works or collects fees or not, an opportunity to incur a loss is present. That did not happen in this case. The worker could not use the truck for others as someone who is a true owner-operator.

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.

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.