

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**

It is our usual practice in cases of this type to solicit information from both parties involved. After the worker's initial filing of the Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding, we requested information from the firm concerning this work relationship. The firm provided information in regard to this work relationship by completing Form SS-8.

From the information provided the firm in the business of providing trucking services to transport goods such as dirt, rock, gravel, concrete, demolition, asphalt, and sand. The worker was engaged to transport product specified by the customer from point A to point B as a Class A CDL contract driver. The firm believes the worker was an independent contractor (IC) while performing services for them because they only provided the tractor and trailer, the worker was supposed to have his own tools such as hard hat, hammer, shovel and vest, and they scheduled the worker based on his availability. There was no written agreement between the firm and the worker. The firm reported the worker's earnings on Forms 1099-MISC.

The firm provided no training to the worker. The firm states they provided instructions to the worker based on the dispatch such as load and dump site. The worker mapped out his own routes. The firm provided the firm with his assignments via telephone or text and the firm states the worker determined how he completed his assignments. The firm states the worker was required to notify the job supervisor if any problems or complaints arose on the job site. If the job supervisor did not answer the worker's inquiry, then the worker was required to notify the firm's owner. The worker was required to personally perform his services at the firm's clients' locations 95% of the time and at the firm's premises five percent (5%) of the time. The worker's hours varied every day and the worker's start and stop time were determined by the company the firm worked for. The worker was required to submit a daily ticket to the firm which included info such as driver's name, date, etc. There were no required meetings other than safety meetings; the firm states usually there were only one-on-one conversations with the worker. The hiring and paying of substitutes or helpers did not apply in this case.

The firm provided the tractor, trailer, and fuel to the worker in order to perform his services. The firm states the worker provided a hard hat, safety vest, safety glasses, hammer, shovel, Bluetooth, and telephone. The worker, when needed, incurred expenses for engine oil, coolant, antifreeze, and windshield wiper fluid which the firm states they reimbursed the worker for. The clients paid the firm and the firm paid the worker at an hourly rate. The firm states they and the client established the level of payment for the services provided. The firm states they provided Workers' compensation insurance on the worker as it was required by most of their customers.

The worker was not eligible for employee benefits. The firm states the worker performed similar services for others and he was not required to seek their approval to do so. The firm states they represented the worker as a driver to their clients performing services under their business name. Either party could terminate the work relationship at any time without incurring a liability. The firm terminated the work relationship.

The firm states the worker's responsibility in soliciting new clients was that the worker needed to behave and perform as the job supervisor requested so that the supervisor would request the same driver for the next day.

Analysis

As is the case 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 payer. 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 the payer rather than an entity of his own. The payer was responsible for the quality of the work performed by the worker and for the satisfaction of their clients. This gave the payer 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.

The firm's statement that the worker performed services on only when he was available and therefore, an independent contractor is without merit as both employees (seasonal) and independent contractors can perform services when the needs of a business warrants. A continuing relationship was established rather than a one-time transaction taking place. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals. The existence of a continuing relationship indicates an employer/employee relationship was established.

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. While the worker provided some hand tools and hard hat, this is not considered a significant investment. 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. The firm had the significant investment in the work relationship as they provided the tractor and the trailer and expenses in operating their business.

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.

There was no evidence presented nor found in this investigation that indicates that the worker had an investment in a business related to the services he performed for the firm and offering those services to the public. It should be noted that it is possible for a person to work for a number of people or firms concurrently due to financial need and the supporting of oneself and be an employee of one or all of whom engages him.

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.