

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC Pilot Car Driver to Escort

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 worker initiated the request for a determination of his work status as a pilot car driver in 2017 and 2018. In a follow-up conversation the worker stated the services were rendered in 2019 as well and there were no changes to the work relationship. The firm's business is described as escorting oversized load trucks.

The firm's response was signed by a manager. The firm's business is a pilot car escort service. The worker provided services as an escort driver.

The firm and worker concur that there were no specific training and instructions; the firm indicated the driver must obtain pilot car certification if they are to be used to escort. The job assignments were sent out via text messages as to where to go and who to escort; and, according to the firm the worker could accept or decline. The worker stated the firm determined the methods by which the worker's services were performed; however, the firm responded that it was the dispatcher and DOT regulations that determined the worker's methods. Any problems or complaints encountered by the worker were directed to the firm for resolution. The worker's services were rendered based on the need of the semi-truck drivers. The worker was required to perform the services personally; any additional personnel were hired and paid by the firm. The firm responded that the worker was not required to perform the services personally; another driver was contacted if a trip was declined.

The firm provided a vehicle, gas, vehicle expenses and repairs, and motel. The worker furnished meals and personal expenses. The worker did not lease equipment, space, or a facility. The worker was paid a per mile rate; the customers paid the firm. The worker was not covered under the firm's workers' compensation insurance policy. The worker responded that he was not at risk for a financial loss in this work relationship; the firm indicated the worker would be at risk if there was damage to equipment. Both parties concur the worker did not establish level of payment for services provided; the firm has a set rate and the worker can accept or decline.

There were no benefits extended to the worker. Either party could terminate the work relationship without incurring a liability or penalty. The worker was not performing same or similar services for others during the same time frame.

Analysis

A worker who is required to comply with another person's instructions about when, where, and how he or she is to work is ordinarily an employee. This control factor is present if the person or persons for whom the services are performed have the right to require compliance with instructions. Some employees may work without receiving instructions because they are highly proficient and conscientious workers or because the duties are so simple or familiar to them. Furthermore, the instructions, that show how to reach the desired results, may have been oral and given only once at the beginning of the relationship.

A continuing relationship between the worker and the person or persons for whom the services are performed indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed in frequently recurring although irregular intervals.

If the person or persons for whom the services are performed ordinarily pay the worker's business and/or traveling expenses, the worker is ordinarily an employee. An employer, to be able to control expenses, generally retains the right to regulate and direct the worker's business activities.

Lack of significant investment by a person in facilities or equipment used in performing services for another indicates dependence on the employer and, accordingly, the existence of an employer-employee relationship. 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.

A person who can realize a profit or suffer a loss as a result of his or her services is generally an independent contractor, while the person who cannot is an employee. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The risk that a worker will not receive payment for his or her services, however, is common to both independent contractors and employees and, thus, does not constitute a sufficient economic risk to support treatment as an independent contractor. If a worker loses payment from the firm's customer for poor work, the firm shares the risk of such loss. Control of the firm over the worker would be necessary in order to reduce the risk of financial loss to the firm. The opportunity for higher earnings or of gain or loss from a commission arrangement is not considered profit or loss.

We have considered the information provided by both parties this work relationship. In this case, the firm retained the right to change the worker's methods and to direct the worker to the extent necessary to protect its financial investment and business reputation and to ensure its customers' satisfaction and that its contractual obligations were met. The worker was not operating a separate and distinct business; 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. 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. 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.

CONCLUSION

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.