Form **14430-A**
(July 2013)

Department of the Treasury - Internal Revenue Service

SS-8 Determination—Determination for Public Inspection

Occupation	Determination:
09DVC CDL Truck Driver	[X] Employee [ ] Contractor
UILC	Third Party Communication: [X] 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 submitted a request for a determination of worker status in regard to services performed for the firm from February 2018 to December 2018 as a CDL truck driver. The work done by the worker included interstate operation of the firm's semi-truck and trailer and delivering loads as obtained by the firm. The firm issued the worker Form 1099-MISC for the year in question. The worker filed Form SS-8 as he believes he erroneously received Form 1099-MISC.

The firm's response states it is a transportation business. The worker was engaged as a truck driver. He delivered lumber for another entity using the firm's truck. The worker was classified as an independent contractor based on a signed independent contractor agreement. The firm did not tell the worker how to do the job and it did not know the worker's schedule. The worker did not have to request time off.

The firm stated it did not provide specific training or instruction to the worker. The worker received work assignments from the lumber yard. The worker determined the methods by which assignments were performed. The lumber yard and firm were contacted if problems or complaints arose. Reports and meetings were not required. The worker delivered loads as appointed by the lumber yard. The firm did not know where the truck went. The worker took the truck home and did his own maintenance. Services were performed over-the-road for 6–10 hours per day. The firm required the worker to personally perform services. Some drivers hire helpers to strap and tarp. If hired by the driver, the driver is responsible for paying the helper. The worker stated he was initially required to test drive the firm's truck. The firm or the firm's customer provided work assignments. The firm determined the methods by which assignments were performed. The firm was contacted and assumed responsibility for problem resolution. The firm retrieved E-logs from its truck. Load sheets and bills were provided to the firm so it could request payment from its customers. The firm was responsible for hiring and paying substitutes or helpers.

The firm stated it provided the truck, trailer, and fuel. The worker provided his skills, gloves, and work tools needed. The worker did not lease equipment, space, or a facility. It is unknown if the worker incurred expenses in the performance of services for the firm. The firm did not reimburse the worker for any expenses. Customers paid the firm. The firm paid the worker an hourly rate of pay; a drawing account for advances was not allowed. The firm did not carry workers' compensation insurance on the worker. The worker's economic loss or financial risk related to equipment damage and overweight tickets. The firm established the hourly rate of pay for the services provided. The worker stated the firm also provided all equipment maintenance and parts, and insurance. He did not provide supplies, equipment, or materials. He incurred the unreimbursed expense associated with his yearly DOT physical and cost of CDL. The firm reimbursed him all other expenses. He did not incur economic loss or financial risk.

The firm stated benefits were not made available to the worker. The relationship could be terminated by either party without liability or penalty. The worker did not perform similar services for others. There was no agreement prohibiting competition between the parties. Services were performed under the firm's business name. The work relationship ended when the contract ended, job was completed. The worker stated he did not advertise. The firm represented him as an employee to its customers. The work relationship ended when he quit.

The independent contractor agreement states, in part, the worker would be evaluated every 90 days as to his performance. The worker was responsible for proper preparation of all driver logs, fuel and mileage reports, and fuel receipts. Paperwork had to be turned in weekly. If not turned in, loads would not be issued to the worker and the firm would not pay the worker for completed loads. The firm was to be contacted and responsible for resolution if the worker encountered abusive loading point or delivery point personnel. If provided company shirts, the worker was expected to wear them at all pick-up and delivery locations. All weigh scale inspections were to be sent to the firm. The firm could immediately terminate the agreement for a variety of reasons including the worker consistently not meeting loading times that could cause a down grade in the firm's carrier performance rating. The worker was expected to give the firm a two-week written notice to terminate the contract. The firm could also cancel the contract due to no fault at any time by providing a 48-hour notice to the worker. The contract could change at any time without notice as required by law or change in company officers. A new contract would be given to the worker for signature. If not agreed to by both parties, all prior contracts could result in termination.

Analysis

Generally, the relationship of employer and employee exists when the person for whom the services are performed has the right to control and direct the individual who performs the services, not only as to what is to be done, but also how it is to be done. It is not necessary that the employer actually direct or control the individual, it is sufficient if he or she has the right to do so.

Section 31.3121(d)-1(a)(3) of the regulations provides that if the relationship of an employer and employee exists, the designation or description of the parties as anything other than that of employer and employee is immaterial. Thus, if an employer-employee relationship exists, any contractual designation of the employee as a partner, coadventurer, agent, or independent contractor must be disregarded.

Therefore, the firm's statement that the worker was an independent contractor pursuant to a written agreement is without merit. For federal employment tax purposes, it is the actual working relationship that is controlling and not the terms of the contract (oral or written) between the parties. Furthermore, whether there is an employment relationship is a question of fact and not subject to negotiation between the parties.

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 truck driving services performed by the worker were integral to the firm’s business operation. The firm provided work assignments by virtue of the customers served, required the worker to submit required paperwork, and ultimately assumed responsibility for problem resolution. These facts evidence the firm retained the right to direct and control the worker to the extent necessary to ensure satisfactory job performance in a manner acceptable to the firm. Based on the worker's education, past work experience, and work ethic the firm may not have needed to frequently exercise its right to direct and control the worker; however, the facts evidence the firm retained the right to do so if needed.

Payment by the hour, week, or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job. In such instances, the firm assumes the hazard that the services of the worker will be proportionate to the regular payments. This action warrants the assumption that, to protect its investment, the firm has the right to direct and control the performance of the workers. Also, workers are assumed to be employees if they are guaranteed a minimum salary or are given a drawing account of a specified amount that need not be repaid when it exceeds earnings. In this case, the worker did not invest capital or assume business risks. 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. Based on the hourly rate of pay arrangement the worker could not realize a profit or incur a loss.

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 is no evidence to suggest the worker performed similar services for others as an independent contractor or advertised business services to the general public during the term of this work relationship. The classification of a worker as an independent contractor should not be based primarily on the fact that a worker’s services may be used on a temporary, part-time, or as-needed basis. As noted above, common law factors are considered when examining the worker classification issue.

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.

The firm can obtain additional information related to worker classification online at www.irs.gov; Publication 4341.