

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

Occupation

09DVC CDL 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**

Both parties agreed that the worker had filled out an application to obtain the job. The firm engaged the worker as an employee from 8/01/2018 until 5/16/2019. According to the worker, the same services were previously performed for the firm from 8/16-7/18. The worker was receiving only form W-2 at that time. The worker stated that the firm told the work to switch over to form 1099Misc because it would give the worker so many tax options. Internal research shows the firm issued only Form W-2 in 2019 and 2020 as well to the worker.

Both parties agreed the worker did receive instruction from the firm. Both parties agreed the worker received instructions regarding the services to be performed by the firm. Assignments were given daily, verbally on the phone, in person or via text message to the worker from the firm. The worker performed services on various days and at various times. Usually started the shift at 7:30am and ending depending on where the worker was driving to and from. Services were performed on the firm's & firm's customers premises. Both parties agreed the firm was responsible for problem resolution. The worker was required to submit reports such as driver logs, ELD and pay slips. The worker was not required to attend meetings. The relationship between the parties was continuous, as opposed to a one-time transaction. The nature of this relationship contemplated that the worker would perform the services personally. Services performed by the worker were an integral and necessary part of the services the firm provided to its customers. Both parties agreed the firm would have to approve any substitutes or helpers hired to replace the worker.

Any equipment needed to perform services was provided by the firm at no expense to the worker, such as fuel, maintenance, and tires. The firm determined the fees to be charged. The firm's customers paid the firm. The worker did not incur any significant business expenses. A lump sum was paid to the worker, due to gas mileage and wait times at the stops. The worker was able to use a drawing account that needed to be paid back in a certain amount of time. The firm did not carry worker's compensation insurance on the worker.

The worker was not eligible for sick pay, vacation pay, health insurance, however there was a Christmas bonus given by the firm to the worker. Either party may terminate the worker's services at any time without incurring a penalty or liability. The worker was not a member of a union. According to internal research, the worker did not perform services for others. No advertising was done by the worker for services performed. No office, shop, or other place of business was held by the worker to indicate a business presence. The worker was required to perform the services under the name of the firm and for the firm's clients. The relationship between the parties had not ended at the time of the request for determination.

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**Analysis**

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The worker performed personal services on a continuous basis. Work was performed on the firm's and firm's customer's premises, on a regular schedule set by the firm. All significant materials and equipment were provided by the firm at no expense to the worker. The worker was required to submit driver logs to the firm. The worker could not incur a business risk or loss. A lump sum totaling mileage and hours waited at the stop, was paid to the worker. The worker did not hold the services out to the general public. No advertising was done by the worker for services performed. No office, shop, or other place of business was held by the worker to indicate a business presence.

The above facts do not reflect a business presence for the worker, but rather, strongly reflect the payer's control over the worker's services and the worker's integration into the payer's business. The fact that the worker was not closely monitored would not carry sufficient weight to reflect a business presence for the worker. In fact, many individuals are hired due to their expertise or conscientious work habits and close supervision is often not necessary. Usually, independent contractors advertise their services and incur expenses for doing so. In this case, these facts are strong indicators that the worker is not an independent contractor.

Contractual designation of a worker as an independent contractor cannot outweigh evidence regarding the actual relationship between worker and taxpayer.

Based on the common-law principles, the firm had the right to direct and control the worker. The worker shall be found to be an employee for Federal tax purposes.