

SS-8 Determination—Determination for Public Inspection

Occupation 09DVC Drivers & Vessel Control	Determination: <input checked="" type="checkbox"/> Employee <input type="checkbox"/> Contractor
UILC	Third Party Communication: <input checked="" type="checkbox"/> None <input type="checkbox"/> 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 firm mentioned the worker was a referral for hire, however, the worker stated the job was obtained on [REDACTED] The firm provided an application, filled out by the worker. The firm engaged the worker as an employee from 02/2017 until 12/2017.

Both parties agreed the worker did receive instruction from the firm on safety training. Both parties agreed the worker received instructions regarding the services to be performed by the firm. Assignments were given daily, verbally on the phone to the worker from the firm dispatchers. The worker performed services on various days and at various times. Services were performed on the firm's premises and firm's customer location. Both parties agreed the firm was responsible for problem resolution. The worker was required to submit reports such as driver log, premaintenance truck forms and fuel receipts. The worker was required to attend employee and safety 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.

A work truck, trailer and equipment needed to perform services were provided by the firm at no expense to the worker. The firm determined the fees to be charged. The firm's customers paid the firm. According to the firm, there was a drawing account for the worker, at least 2 times a year, not to exceed [REDACTED] either time. The worker mentioned any expenses incurred on the road were reimbursed by the firm. The worker did not incur any significant business expenses. A salary based on the totals of the services performed was paid to the worker. The firm did not carry worker's compensation insurance on the worker.

: Both parties disagreed whether or not the worker was eligible for holiday and vacation pay. 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 similar services performed. No office, shop, or other place of business was held by the worker to indicate a similar 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 ended when the worker quit.

Analysis

The worker obtained the job by answering an online ad and filling out an application. A salary was paid to the worker. The worker performed personal services on a continuous basis for the firm. Work was performed on the firm's and firm's customer's premises, on a regular schedule set by the firm. All significant materials, a work truck and trailer were provided to the worker by the firm. Prices for services were set by the firm. Customers paid the firm. Daily logs of maintenance, fuel receipts and driver daily deliveries were turned into the firm. The worker was required to attend employee and safety meetings. Either party could terminate the relationship without incurring a penalty or liability; in fact, the relationship ended when the worker resigned. The worker could not incur a business risk or loss. The worker did not hold the services out to the general public.

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.

A Form W-9 was signed. A Form W-9 is an information form requesting taxpayer identification and certification. Therefore, this does not indicate the worker to be an independent employee.

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.