

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**

The firm is an entity that hauls livestock from feedlots to market or pasture to feedlots for their customers. The firm engaged the worker as a truck driver in 2018. The worker had performed services previously for the firm. The worker submitted a Form SS-8 after receiving a Form 1099-Misc from the firm. The firm replied with a Form SS-8.

The worker stated he receive instruction from the firm on how to load and unload livestock. He was required to have a commercial driver's license to perform the services for the firm. Both parties agree the worker received his work assignments from the firm by phone or text. They also agree the firm determined the methods by which those assignments were performed. The firm indicated they were responsible for problem resolution. The worker asserted he was required to submit receipts of loads, log of miles driven, fuel receipts and [REDACTED] reports to the firm. However, the firms contend the worker was only required to submit load ticket to them. The worker describes his daily schedule as receiving a call or text from the owner of the firm describing the location he was to drive to and pick up the livestock and where to deliver the livestock. His schedule would vary depending on where the assignment he was given. According to the worker, he would go to the firm's premises to get the company truck and trailer. He would then drive to the firm's customers location. He received regular remunerations for his services. The firm stated the worker was required to attend monthly safety meetings. There were no penalties to the worker for not attending. The relationship between the parties was continuous, as opposed to a one-time transaction. The worker indicated he was required to perform the services personally. Comparatively, the firm stated the worker was not required to perform the services personally. The worker worked exclusively and on a continuing basis for the firm. His services were an integral and necessary part of the services the firm provided to its customers. The firm would hire and pay any substitutes or helpers.

The parties differ over who provided supplies and equipment. The worker asserted hew was provided with a truck, trailer, tools, and all supplies. He only provided his own work clothes, gloves, and boots. However, the firm indicated the worker owned hos own truck and they only proved the worker with the trailer. Both parties agree the worker did not lease equipment. The firm determined the fees to be charged. The worker did not incur any significant business expenses. The worker stated the firm provided him with a company credit card to pay for all fuel expenses. The worker was paid a percentage of each load he hauled. The firm's customers paid the firm. The firm indicated they did carry worker's compensation insurance on the worker. The worker did not have a substantial investment in equipment or facilities used in the work and did not assume the usual business risks of an independent enterprise.

The worker was not eligible for sick pay, vacation pay, health insurance, or bonuses. Either party could terminate the work relationship at any time without incurring a penalty or liability. There was not a "non-compete" agreement between the parties. The worker was not a member of a union. According to internal research, the worker did not perform the services for others. He did not advertise his services to the public or maintain an office, shop, or other place of business. He was required to perform the services under the name of the firm and for the firm's customers. The relationship between the parties ended when the worker resigned.

The information submitted on the Form SS-8 and the internal research conducted provided enough information to provide a determination for this case. The facts of the case indicate that the firm had the right to control the worker.

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.

In determining whether an individual is an employee or an independent contractor under the common law, all evidence of both control and lack of control or independence must be considered. We must examine the relationship of the worker and the business. We consider facts that show a right to direct or control how the worker performs the specific tasks for which he or she is hired, who controls the financial aspects of the worker's activities, and how the parties perceive their relationship. The degree of importance of each factor varies depending on the occupation and the context in which the services are performed.

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.

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.

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.

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 payer'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.

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.

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