

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC.65/Truck Driver

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is in business to provide transportation freight services. The worker was engaged to perform services as a truck driver to deliver freight as part of the firm's business operations. The firm issued to the worker a Form 1099-MISC at year-end to report the monies received for his services as non-employee compensation.

A review of the information provided indicates that the worker rented tractor equipment from another party. The worker then entered into an Independent Contractor Lease Agreement with the firm in this case, referred to as the carrier, for the purpose of leasing the tractor equipment to the firm for use under its operating authority by the FMCSA to contract freight transportation services.

The worker was an experienced and licensed truck driver, who did not need specific training or instructions on how to perform his driving services. The firm offered loads to the worker, of which he could have accepted or declined. When a load was accepted, the worker picked up the tractor equipment at the firm's location, and then picked up and delivered loads with the firm's trailers, according to the firm's instructions. Work methods were determined by the worker, the firm, and according to FMCSA regulations. Problems or complaints that the worker could not resolve were reported to the firm for resolution purposes. In accordance with the FMCSA regulations, the worker provided the firm with driver logs. He also provided the firm with mileage reports. There was no information provided to evidence that the worker engaged his own helpers to perform the services, but rather he performed his services personally.

The leased trucking equipment became the firm's property at the signing of the independent contractor lease agreement. The tractor, and the firm's trailers were used to perform the services. The worker incurred expenses for operation of the trucking equipment. The firm, as a carrier, agreed to issue required permits to the worker at the carrier's expense. All permits issued by the firm were to remain at all times the sole property of the firm. The worker was to immediately return all permits issued to him upon the termination of the agreement, or at the request of the firm. All property owned by the firm (including but not limited to, trailers, cab cards, permits, plates, hoses, fittings, and decals) were to be returned to the firm within 48 hours after the effective date of the cancellation of the agreement. The firm paid for tolls, and supplies for the equipment. There was no information provided to evidence that the worker incurred economic loss or financial risk with regard to the services he performed for the firm. The worker was paid on a commission basis for his services, as established by the firm. Customers made payment to the firm for services rendered.

The firm did not carry workers' compensation insurance on the worker. There was no information provided to evidence that employment benefits were made available to the worker. The worker did not perform similar services for others, nor did he advertise his services to others while engaged by the firm. The work relationship was continuous as opposed to a one-time transaction.

Analysis

There was no information provided to evidence that the worker was a valid owner/operator. The lease agreement regarding the tractor does not meet all the criteria of 49 CFR section 376.12. There was no indication of an option to purchase leased equipment after the lease agreement expired. The agreement is deemed as a rental agreement. Furthermore, the firm remained in possession and control of the equipment per its agreement with the worker.

The facts provided for this case do not evidence the worker's behavioral control of the work relationship. The worker followed the firm's instructions, schedule, and routine in the performance of his services. The worker's services were performed personally, at locations designated by the firm. The worker performed the services under the firm's operating authority, and he represented the firm's business operations in the performance of his services by displaying the firm's business decals on the trucking equipment. As a result, the firm retained the right to direct and control the worker to the extent necessary to protect its investment, and the reputation of its business operations.

The facts provided for this case do not evidence the worker's financial control of the work relationship. The worker's remuneration was established by the firm. The worker had no opportunity for profit or loss as a result of the services performed for the firm. "Profit or loss" implies the use of capital by a person in an independent business of his or her own. The worker did not have a significant investment in the facilities, equipment, tools, or supplies used to perform his services for the firm. 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.

The worker performed services as requested by the firm, for an indefinite period of time, and both parties retained the right to terminate the work relationship at any time without incurring liabilities. The facts provided for this case do not evidence that the worker was engaged in an independent enterprise, but rather show that he performed his services as a necessary and integral part of the firm's business operations. 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.

Based on common law principles, the worker shall be found to be an employee for Federal employment tax purposes.

For correction assistance, you may refer to Publication 4341, which can be obtained at www.irs.gov