

SS-8 Determination—Determination for Public Inspection

Occupation

09DVC.70 Truck Driver

Determination:

☒ Employee☐ Contractor

UILC

Third Party Communication:

☒ None☐ Yes**Facts of Case**

The firm is a licensed interstate motor carrier and property broker in the business of supply chain management, information, communication and logistics services, and transportation of freight in interstate and intra state commerce. The worker provided his services to the firm as a tractor trailer driver delivering products for the firm to various businesses in 2011 and received the Forms 1099-MISC for these services.

The worker stated that the firm instructed the worker to do all the tasks the job required such as; what to drop off, what to pick up, and all the delivery locations were provided by the firm. The firm stated that there was no instruction or training provided to the worker as he held a valid commercial driver's license, but the end result – i.e., pick-up and delivery of the firm's cargo on a timely basis was dictated by the firm. The worker received his assignments from the firm when he called in to the firm's office or when he picked up the route information, and the firm's dispatcher determined the methods by which the assignments were performed. The firm explained that the worker was free to accept or reject transportation opportunities. If problems or complaints arose the worker was required to contact the firm and the firm was responsible for problem resolution. The firm contends that the worker was responsible for problem resolution. The worker was required by the firm to submit all completed invoices and fuel receipts. The firm added that pursuant to FMCSA regulations, the worker was required to maintain among other mandated reports, a daily log to record his duty status and hours of service. The worker's schedule varied based on the route. After calling in and receiving the route information, he picked up the truck, made the deliveries, and then turned in all the information to the firm's dispatch office. The firm maintains that the worker's schedule was unknown and determined solely by him. He provided his services personally in the firm's truck, at the firm's truck yard, and the firm's customers' locations. The firm agreed that when the worker was transporting one of the firm's intermodal units, it was located on the firm's premises. The firm expressed that the worker was able to attend safety meetings, but was not penalized for non-attendance. If additional help was required, the worker stated that the firm hired and compensated the helpers. The firm contends that the worker hired and compensated the helpers.

The firm provided all the necessary supplies and equipment the worker needed to provide his services such as; the truck, fuel, truck repairs, insurance, and general maintenance. The firm asserted that aside from the forms and documentation, the firm did not provide any supplies or equipment the worker needed to provide his services. The worker did not lease any equipment nor were any business expenses incurred in the performance of his services. The firm stated that the worker did lease equipment. The worker was paid a percentage of the revenue generated from each delivery he completed. The firms' customers paid the firm for the services the worker provided. The worker did not assume any financial risk in the relationship. The firm maintained the right to charge the worker for damage to cargo and other losses the firm incurred as a result of the worker's negligence. The firm established the level of payment for the services the worker provided.

The worker did not perform similar services to others during the same time period. He provided his services under the firm's business name. Both parties retained the right to terminate the relationship without incurring liability. In fact, the relationship ended when the worker left to work for another firm.

Analysis

The application of the three categories of common law evidence to the available facts of the relationship indicates that the firm retained the right to direct and control the worker in the performance of his services. Accordingly, the worker was an employee of the firm for purposes of Federal employment taxes.

Worker status is not something to be selected by either the firm or the worker. Worker status is determined by the examination of the actual working relationship as applied to Internal Revenue Service code.

There was a written contract describing the terms and conditions of the relationship. However, for Federal tax purposes it is the actual working relationship that is controlling and not the terms and conditions of a contract be it written or verbal between the parties. See also Section 31.3121(d)-1(a)(3) of the Employment Tax Regulation.

Hence, to clarify the Federal Government's position on worker status, we will be determining this case based on their common law practices in which the actual relationship between the parties is the controlling factor.

The firm retained the right, if necessary to protect their business interest, to determine or change the methods used by the worker to perform his assignments. 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. The facts show that the worker was subject to certain restraints and conditions that were indicative of the firm's control over the worker. A requirement that the worker submit regular or written reports to the person or persons for whom the services are performed indicates a degree of control. The worker had a continuous relationship with the firm as opposed to a single transaction. 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. The worker rendered his services personally. If the services must be rendered personally, presumably the person or persons for whom the services are performed are interested in the methods used to accomplish the work as well as in the results. If the work is performed on the premises of the person or persons for whom the services are performed, that factor suggests control over the worker, especially if the work could be done elsewhere. Work done off the premises of the person or persons receiving the services, such as at the office of the worker, indicates some freedom from control. However, this fact by itself does not mean that the worker is not an employee. The importance of this factor depends on the nature of the service involved and the extent to which an employer generally would require that employees perform such services on the employer's premises. Control over the place of work is indicated when the person or persons for whom the services are performed have the right to compel the worker to travel a designated route, to canvass a territory within a certain time, or to work at specific places as required. The worker's services were under the firm's supervision.

The firm provided the worker with the necessary equipment and materials. The fact that the person or persons for whom the services are performed furnish significant tools, materials, and other equipment tends to show the existence of an employer-employee relationship. His pay was based on a percentage of the revenue generated from each delivery he completed. The worker could not have incurred a loss in the performance of his services for the firm, and did not have any financial investment in a business related to the services performed.

The worker worked under the firm's name, and his work was integral to the firm's business operation. The above facts do not reflect a business presence for the worker, but rather, strongly reflect the firm'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. If the worker has the right to end his or her relationship with the person for whom the services are performed at any time he or she wishes without incurring liability, that factor indicates an employer-employee relationship. Either the firm or the worker could terminate the agreement.

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.